No. 10560

United States
Circuit Court of Appeals
For the Ninth Circuit

E. J. JONES, Appellant,

vs.

JIM BRUSH, State Treasurer of the State of Arizona, SIDNEY P. OSBORN, Governor of the State of Arizona, DAN E. GARVEY, Secretary of State of the State of Arizona, MARICOPA COUNTY, JOHN A. FOOTE, ED. OGLESBY and PHIL ISLEY, Constituting the Board of Supervisors of Maricopa County, Arizona,

Appellees.

APPEAL FROM UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

BRIEF OF APPELLANT

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BRIEF OF APPELLANT

Note: The parties will be referred to by their designations in the District Court, viz: Appellant as plaintiff, and appellees as defendants. References to the Transcript of Record will be indicated by the letter T, followed by page number.

PRELIMINARY STATEMENT

Plaintiff brought this suit in the United States District Court, for the District of Arizona, at Phoenix, seeking a declaratory judgment against the defendants, to the effect that it would be a breach of trust

for the defendant, Jim Brush, as State Treasurer, to surrender to the defendant, Maricopa County, certain Highway Improvement Bonds of said defendant, issued in the years 1919 and 1921, and not yet due, for the reason that said bonds are not callable and to surrender the same at this time will cause a serious loss to the Trust Fund consisting of proceeds derived from the sale of lands granted to the State by the Enabling Act, for the benefit of the schools of the state. Additional relief was also prayed for.

The bonds involved are of the same issues as those involved in the case of, *State of Washington and Equitable Life Insurance Company, Appellants, vs. Maricopa County, et al*, Number 10493, bonds of said issues having been purchased by the State Treasurer with said school funds in the aggregate amount of Fifty-six Thousand Dollars.

STATEMENT OF JURISDICTION

I

Jurisdiction of District Court

The cause of action arises out of the Enabling Act, admitting the State of Arizona into the Union. (Act of Cong. June 20, 1910). The provisions of said Act upon which the complaint is based are the following:

> "Section 28. That it is hereby declared that all lands hereby granted, including those which, having been heretofore granted to said Territory, are hereby expressly transferred and confirmed

to the said State, shall be by the said State held in trust, to be disposed of in whole or in part only in manner as herein provided and for the several objects specified in the respective granting and confirmatory provisions, and that the natural products and money proceeds of any of said lands shall be subject to the same trusts as the lands producing the same.

Disposition of any of said lands, or of any money or thing of value directly or indirectly derived therefrom, for any object other than for such particular lands, or the lands from which such money or thing of value shall have been derived, were granted or confirmed, or in any manner contrary to the provisions of this Act, shall be deemed a breach of trust.

* * *

"Every sale, lease, conveyance, or contract of or concerning any of the lands hereby granted or confirmed, or the use thereof or the natural products thereof, not made in substantial conformity with the provisions of this act shall be null and void, any provisions of the Constitution or laws of the said State to the contrary notwithstanding. It shall be the duty of the Attorney General of the United States to prosecute, in the name of the United States and in its courts, such proceedings at law or in equity as may from time to time be necessary and appropriate to enforce the provisions hereof relative to the application and disposition of the said lands and the products thereof and the funds derived therefrom.

> Nothing herein contained shall be taken as in limitation of the power of the State or of any citizen thereof to enforce the provisions of this Act."

The right of the Attorney General of the United States to enforce the above trusts has been upheld by the United States Supreme Court.

> Ervien Commissioner of Public Lands of the State of New Mexico, v. U. S., 251 U. S. 41;
> 64 Law ed. 128;
> 40 Sup. Ct. Rep. 75.

The Supreme Court of New Mexico has held that under the laws of that state, a citizen and taxpayer has no right to maintain an action to prohibit the improper disposition of such trust funds under the provisions of the Enabling Act.

> Asplund v. Hannett, 249 Pac. 1074;
> 31 N. Mex. 641;
> 58 A. L. R. 573.

The Circuit Court of Appeals, Eighth Circuit, has followed the above decision.

> Downer v. Graham, 21 Fed. (2d) 732.

The Supreme Court of Arizona, however, has reached the conclusion that a citizen of Arizona may enforce the prohibitions against an improper expenditure of proceeds of federal land grant funds imposed by the Enabling Act.

Rowlands v. State Loan Board, 24 Ariz. 116, 123; 207 Pac. 359.

Boyce v. Pima County, 24 Ariz. 259; 208 Pac. 419.

The Enabling Act did not grant to citizens of the state the right to enforce the restrictions upon the expenditure of state land grant funds, but it took away no such right that otherwise might exist. The express language of the act being,

> "Nothing herein contained shall be taken as in limitation of the power of the state or of any citizen thereof to enforce the provisions of this act".

Sec. 28, Ariz. Enabling Act (Act of Cong. June 20, 1910).

It appears from the Enabling Act that Congress has provided that the trust created by the Enabling Act may be enforced by the United States Attorney General, and by the State, and has adopted the state law for determining who may exercise the state's right to enforce the provisions of the trust.

In New Mexico, it is held that citizens and taxpayers do not have such a right. In Arizona it is held, under the state law, that any citizen has such right. The adoption by Congress of state law for such purposes is not unusual.

In *Jackson County v. U. S.*, 84 Law ed. 313, 317, 308 U. S. 343, 60 Sup. Ct. Rep. 285, the court says:

> "With reference to other federal rights the state law has been absorbed as it were as the governing federal rule, not because state law was the source of the right, but because recognition of state interests was not deemed inconsistent with federal policy."

When the state law recognizes the right to enforce such provisions the federal courts have jurisdiction by reason of the fact that such an action is a suit arising under the laws of the United States within the meaning of *Section* 41, *Title* 28, *U. S. Code Ann.*

King County v. Seattle School Dist.,
68 Law ed. 339;
263 U. S. 361;
44 Sup. Ct. Rep. 127.

The federal jurisdiction in such a case is also recognized by the Circuit Court of Appeals, Eighth Circuit, in *Downer v. Graham*, 21 Fed. (2d) 732, and is supported by the general principle that wherever a right asserted by a plaintiff depends upon the construction to be placed upon a federal statute, the case arises under the laws of the United States.

First Nat. Bank v. Williams, 252 U. S. 504, 512;
64 Law ed. 692;
40 Sup. Ct. Rep. 374.

Hopkins v. Walker, 244 U. S. 486, 489;
61 Law ed. 270;
37 Sup. Ct. Rep. 711.

Northern Pacific Ry. Co. v. Soderberg,
188 U. S. 526, 528;
47 Law ed. 575;
23 Sup. Ct. Rep. 365.

Cooke v. Avery, 147 U. S. 375, 390;
37 Law ed. 209;
13 Sup. Ct. Rep. 340.

The New Mexico cases are no obstacle to the right of the plaintiff to maintain this suit. Whether the surrender of the bonds in question by the State Treasurer will constitute a breach of trust depends upon the provisions of the Enabling Act, and hence, any case presenting that question involves a federal question, and the federal courts have jurisdiction. The question of who, in addition to the Attorney General of the United States may enforce the terms of the trust, is left by the Enabling Act to the law of the state. The decision of the Supreme Court of New Mexico adopting the minority rule, (Note 58 A. L. R. 589) that a taxpayer can not maintain such an action settles the law of New Mexico, and hence, it follows that such an action cannot be maintained by a taxpayer in New Mexico. But, when the Supreme Court of Arizona adopted the rule that a citizen of the state might enforce the trusts created by the act, that settled that question for the state of Arizona, because the Enabling Act had adopted the law of the state for that purpose, but when such citizen or taxpayer comes into court to enforce the rights under the trust, he is enforcing rights granted by the Enabling Act, which is a federal act, and thus, his complaint presents a federal question under *Sec.* 41, *Title* 28 *U. S. Code Ann.*

The complaint alleges that the loss incurred by the state if these bonds are presently surrendered will exceed Three Thousand Dollars. (T. 4, 5).

II

Jurisdiction Under Declaratory Judgment Act

The relief sought is under the Declaratory Judgment Act. (T. 57). Additional relief is also prayed for. An actual controversy exists, for defendant State Treasurer is recognizing the decision made by the Supreme Court of Arizona, and is about to surrender bonds in deference to that decision. The plaintiff maintains that the Treasurer has not the right to surrender such bonds and thereby impair the fund in his custody for the reason that there has been no authoritive determination of such right, the question of the proper construction of the Enabling Act in that respect, being a question for the federal courts. Hence, plaintiff seeks a determination of the question in those courts. That there is an actual controversy pending is established by the following cases:

Maryland Casualty Co., v. Pacific Coal & Oil Co.,
312 U. S. 270;
85 Law ed. 826;
61 Sup. Ct. Rep. 510.

Aetna Life Ins. Co. v. Haworth, 300 U. S. 227;
81 L. ed. 617;
57 Sup. Ct. Rep. 461.

Stoner v. New York Life Ins. Co.,
311 U. S. 464;
85 L. ed. 284;
61 Sup. Ct. Rep. 336.

The additional relief prayed for also sustains federal jurisdiction.

III

Jurisdiction of Circuit Court of Appeals

The judgment rendered in this case is a summary judgment, rendered pursuant to Rule 56 of the *Rules of Civil Procedure*, (T. 139-143), and is a final judgment.

28 U. S. Code Ann., 400.

Appeal therefrom lies under 28 *U. S. Code Ann.*, Sec. 225, the general statute on appeal, and within the time limit allowed by 28 *U. S. Code Ann.*, Sec. 230. Notice of appeal was seasonably given and appeal bond filed. (T. 143-145).

STATEMENT OF FACTS

The facts alleged in the complaint, (T. 2-58) are as follows:

Plaintiff sues as a citizen, resident and taxpayer of the state of Arizona, and as such, claims the right to enforce the trusts created by the Enabling Act of the State of Arizona, (T. 2-3).

Defendant, Jim Brush, as State Treasurer, is the custodian of the funds and securities derived by the state, in trust, under the provisions of the Enabling Act, and is charged with the duty of investing such funds. (T. 3).

Defendants, Sidney P. Osborn and Dan E. Garvey, are Governor and Secretary of State, respectively, and charged with the duty of approving securities in which

the State Treasurer invests money of said trusts. (T. 3).

Defendants, John A. Foote, Ed. Oglesby and Phil Isley, constitute the Board of Supervisors of Maricopa County, (T. 3).

The jurisdiction of the United States District Court is invoked upon the ground that this is a case arising under the Arizona Enabling Act, (Act. of Cong., June 20, 1910), (T. 3-4).

Defendant, Jim Brush, as State Treasurer of Arizona, is trustee or custodian of a total of $56,000.00 par value of two issues of Maricopa County Highway Bonds, $31,000.00 being of the 1919 issue, bearing 5½% interest per annum, and becoming due and payable on the 15th day of June, during the years 1945 to 1949, inclusive, and $25,000.00 being of the 1921 issue, bearing 6% interest per annum, and becoming due and payable on the 15th day of January, during the years 1944 to 1951, both inclusive. All of said bonds are owned by the State of Arizona, and are held in that portion of the trust created by Sections 24 to 28, both inclusive, of the Enabling Act, known as the Permanent School Fund. (T. 4). All of said bonds are due and payable on definite dates, and defendant Maricopa County is legally bound to pay the agreed rate of interest thereon until the due dates therein specified. (T. 4).

The difference between the value of said bonds, if the county is legally bound to pay the agreed rate of interest thereon until their respective due dates, and their value if they are presently subject to call for re-

demption as is contended by Maricopa County, exceeds the sum of $3,000.00. (T. 4-5).

Both issues of said bonds were issued under Chapter 2, Title 52, *Arizona Revised Statutes of* 1913, and Chapter 31, *Arizona Session Laws of* 1917. (T. 5-9). Under said statutes said bonds were required to be issued with definite due dates. There was no provision in said statutes, nor any custom, statute, law or practice of the State of Arizona at the date of the issuance of said bonds, contemplating the calling of said bonds before their maturity dates. (T. 9).

Under said statutes, both of said bond issues were issued with definite maturity dates, extending over a period of twenty years, beginning with the year 1930 for the first issue, and the year 1931 for the second issue. (T. 10, 20). The proceedings for the issuance of said bonds provided that said bonds should be payable on definite maturity dates, and the proposition voted on by the electors authorized such dates. (T. 11, 21).

The form of said bonds provided for definite maturity dates, and coupons attached provided for the interest payable on such dates. (T. 15, 25). After the form of said bonds was adopted and placed on record, both of said issues of bonds were ratified and approved by the legislature of the state of Arizona. (T. 18, 28).

Thereafter, said bonds were purchased in the open market by various purchasers, and the State Treasurer of the State of Arizona, with the approval of the Governor and Secretary of State, purchased said

bonds, and in reliance upon the provisions in said bonds, the proceedings for their issuance, and the statutes of the state, paid a large premium for the right to collect interest on said bonds to their due dates. (T. 19, 29).

Accrued interest has been paid on said bonds, and the bonds that have become due have been paid. (T. 30).

In the year 1942, the Board of Supervisors of Maricopa County adopted a resolution demanding that the State Loan Commissioners of the State of Arizona proceed to refund these bonds, claiming that said bonds were redeemable by the State Loan Commisioners at any time when a saving could be effected to the county, notwithstanding the definite maturity dates therein contained. (T. 30). The State Loan Commissioners at first refused the request. Thereupon, a mandamus action was brought to compel them to proceed. Maricopa County and said Loan Commissioners were the only parties to said proceeding. The Supreme Court of Arizona, in said mandamus action, sustained the contention of said Supervisors. (T. 30-31).

Thereafter, the Loan Commissioners advertised for sale the refunding bonds, the proceeds of which were to be used for calling in the outstanding bonds. (T. 31). One bid was received and was accepted by said Loan Commissioners, (T. 31, 32), and, after the acceptance thereof, the bidder requested the bringing of a further mandamus suit in the state Supreme Court to determine the validity of said bonds and the eventual sale and delivery thereof to the bidder. Such suit was brought and the Supreme Court of Arizona

entered judgment in this second mandamus suit, requiring the Loan Commissioners to proceed with the issuance of said bonds. (T. 32-35). Maricopa County and said Loan Commissioners were the only parties to said suit. (T. 32).

The defendants, Jim Brush, as Treasurer, and the defendants, Sidney P. Osborn and Dan E. Garvey, as Governor and Secretary of State, respectively, of the state of Arizona, assert and declare that they, as officers of the State, are bound to abide by the decision of the Supreme Court in the two above mentioned mandamus suits, and they will surrender the above described bonds held in trust for the schools of said state in deference to said decisions, immediately upon call for the redemption of said bonds being made. (T. 35).

Plaintiff alleges there is imposed upon the said defendants the duty to protect the school funds and other funds derived from lands donated to the state of Arizona by the federal government from loss, impairment or diminution, by all lawful means within their power, and that it is their duty under the provisions of the Enabling Act to resist the unlawful depletion of said trust funds by the above mentioned erroneous decisions of the Supreme Court of Arizona, by resorting to the federal courts to prevent the threatened unlawful call and redemption of said bonds, and the consequent depletion of the trust funds thereby. (T. 35, 36).

The surrender of said bonds before their due dates, and the subsequent loss caused thereby to said trust fund, in deference to the above mentioned mandamus

decisions of the state Supreme Court, without submitting said question to the federal courts, which are charged with the duty of protecting said trust funds, will constitute a breach of trust by said defendants, and entitles the plaintiff, as a citizen of the State of Arizona, to bring an action to restrain the contemplated surrender of said bonds. (T. 35-36).

Owing to the doubt as to the validity of the refunding bonds, the price to be paid for the bonds by the single bidder therefor is too low. (T. 36-37). The refunding proceedings are a plan or scheme in which other counties, municipalities and school districts of the state are participating, and the purpose of said scheme is to obtain the redemption of various outstanding issues of bonds held by various counties, municipalities and school districts in the state, and if said plan or scheme is successful, other issues of counties, municipalities, school districts and other subdivisions of the state will be refunded and be redeemed by like proceedings through the State Loan Commissioners, under the same statutory provisions. Some of the municipalities and school districts of Arizona have already taken action looking toward such refunding, and will demand the same of the State Loan Commissioners as soon as the above described Maricopa County Highway bonds are successfully refunded. (T. 37, 38).

Defendant, Jim Brush, holds in the several trust funds under the Enabling Act, a total of over One Million Dollars par value of bonds that will be subject to refunding under the above mentioned decisions of the Supreme Court of Arizona. The refunding and

redemption of such bonds will cause a loss to the several funds of the trusts created by the Enabling Act of over One Hundred Thousand Dollars. (T. 37-38).

All of said bonds are in the main subject to the same arguments in support of refunding, but some of them, issued after the first of July, 1929, are not subject to the contention that the contract created by their issuance was impaired by a state statute that was passed subsequent to the issuance of said bonds. That distinction is immaterial in this suit by reason of the fact that this is a suit brought to protect a trust created under the Enabling Act of the State of Arizona. (T. 38-39).

The loss that will caused by the surrender of the two bond issues involved in the present proceedings will greatly exceed the sum of Three Thousand Dollars, and the loss that will be caused by the surrender of all of the bonds that are in a similar legal situation will exceed the sum of One Hundred Thousand Dollars. (T. 39).

The defendants are proposing to refund and call the outstanding bonds under the provisions of Article 4, Chapter 10, *Arizona Code Annotated*, 1939, which first became a law of the State of Arizona as Article 4, Chapter 60, *Arizona Revised Code*, 1928, which became effective on the first day of July, 1929, several years after the issuance of the above mentioned bonds. Said statute is a law impairing the obligation of contract. (T. 40).

Said statute cannot be reasonably interpreted to authorize the call of bonds theretofore issued with

definite due dates. (T. 41-54). That to surrender said bonds held under the Enabling Act will constitute a breach of trust and will operate as a diversion of trust moneys derived from the lands donated to the State under the provisions of the Enabling Act. (T. 55).

The decisions of the Supreme Court of Arizona, in the suits above mentioned, are not binding upon the federal courts. (T. 55-57).

This suit is brought under the provisions of the Declaratory Judgment Act. Additional relief is also sought if found necessary. (T. 57).

The proceedings for the issuance of said refunding bonds are initiated and put into operation by resolutions adopted by the Board of Supervisors of Maricopa County. (T. 30-31).

The facts in regard to the bond issues affected by this action, and the proceedings for the redemption and call thereof before their due dates, are the same as in Case No. 10493, now pending on appeal in this court.

ASSIGNMENTS OF ERROR.

Assignment of Error No. 1.

The District Court erred in entering summary judgment against the plaintiff on the motion of the defendants, for the reason that the complaint shows that the plaintiff, as a citizen and taxpayer of the state of

Arizona, has the right, under the laws of the state of Arizona as set forth in the decisions of its courts, and the provisions of the Enabling Act, to enforce the provisions of said Enabling Act prohibiting the diversion, depletion and diminution of the trust funds derived from the sale of lands donated to the State of Arizona by the United States, and that said complaint states a case for declaratory relief within the jurisdiction of the United States District Court, in that it shows an actual controversy between the plaintiff in the exercise of his said right as a citizen and taxpayer of the state of Arizona and defendants, over the proposed action of the defendants to surrender the bonds held by them in the trust created by the Enabling Act, at a substantial loss to said trust fund, said controversy being that the defendants contend that it is their duty to follow the decisions of the Supreme Court of Arizona in the mandamus suits and recognize said bonds as callable, and the plaintiff contends that said decisions of the said Supreme Court are erroneous and not binding upon defendants, and that it is the duty of the defendants to await the determination of the federal courts which are charged with the duty of protecting said trust funds against unlawful diversions, depletions or diminutions.

That said complaint further shows that said bonds bear interest at rates much higher than the current market rate so that the surrender of said bonds at par as is proposed by defendants will deplete the trust fund to the extent of the difference between the amount of interest that will be earned by said bonds before their maturity dates, and the lesser amount of interest that can be earned at the current interest

rate by the money derived from the surrender of said bonds during the same period.

That said complaint further shows that said bonds bear definite maturity dates, and are not callable before maturity, for the reason that said bonds constitute contracts made by Maricopa County under authority granted to it by the State Legislature to pay fixed rates of interest on said bonds until the maturity dates therein specified, without any reservation to call said bonds and stop the payment of interest thereon before their maturity. Said contracts were expressly authorized by Chapter 2 of Title 52, Revised Statutes of 1913, and Chapter 1, of Title 52, Revised Statutes of 1913, is not applicable to said contracts because:

(a) Said Chapter 1 was originally an Act of Congress, passed in the year 1890, for the refunding of certain territorial indebtedness then existing, and that the authority to fund or refund indebtedness under said act and supplements thereto expired January 1, 1897, and such authority was not revived by the re-enactment of said statute upon statehood;

(b) Said statute did not authorize the refunding of bonds which were not due or redeemable according to their terms without the consent of the holders of such bonds;

(c) Said Act of Congress of 1890 provided for the refunding of county bonds with territorial bonds, and, even though re-enacted upon statehood, by the first legislature of Arizona, was inoperative by reason of Section 5 of Article 9 of the Arizona State Constitu-

tion which prohibits the creation of state indebtedness for such purpose;

(d) If said statute had or could have authorized a redemption of county bonds prior to their maturity, such power was repealed by the later enactment of Chapter 2, Title 52, Revised Statutes of 1913, by reason of inconsistent provisions contained in said Chapter 2, as well as by the express provisions of the statutes of Arizona providing that a later statute repeals a prior statute covering the same subject, even though the two statutes are not inconsistent;

(e) The bonds described in the complaint contain positive covenants and agreements of Maricopa County to pay interest thereon at the specified rates until their maturity dates, and these covenants and agreements were ratified and approved by the state legislature by Chapters 54 and 86 of Arizona Session Laws 1921, ratifying and approving said bonds after the form of said bonds containing said covenants and agreements had been made a matter of public record, thereby precluding the redemption and call of said bonds in violation of said covenants and agreements.

The amount involved in this case exceeds the sum of Three Thousand Dollars.

The affidavits filed in support of the motion for summary judgment presented no defense to the complaint. The facts show that jurisdiction of the federal courts is properly invoked, that a case is presented for the exercise of independent judgment of the federal courts upon the contracts involved, and the exercise

of such independent judgment must necessarily result in granting the relief sought by the plaintiff.

Assignment of Error No. 2.

The District Court erred in entering summary judgment against the plaintiff on the motion of the defendants, for the reason that the complaint shows that the plaintiff, as a citizen and taxpayer of the state of Arizona, has the right under the law of the state of Arizona, as set forth in the decisions of its courts, and the Arizona Enabling Act, to bring an action to enforce the provisions of said Enabling Act prohibiting the diversion, depletion and diminution of the trust funds derived from the sale of lands donated to the state of Arizona by the United States, under the provisions of the Enabling Act, and that in his capacity as a citizen and taxpayer of the state of Arizona, the plaintiff has the right to bring action in the district court of the United States to enforce the provisions of the Arizona Enabling Act to enjoin the diversion, depletion and diminution of the funds derived from the sale of the land donated to the state of Arizona by the United States, under the provisions of the Enabling Act, and to enjoin the use of said funds for unauthorized purposes, and that the complaint shows that the defendants' propose to divert, diminish and deplete the trust funds in their custody under the provisions of the Arizona Enabling Act, by surrendering bonds to Maricopa County at their par value when the amount paid for said bonds at their purchase, and their present market value, is greatly in excess of their par value. That while said defendants propose to surrender said bonds upon the ground that the

same have been held by the Supreme Court of Arizona to be callable at their par value, the decision of the Supreme Court of Arizona on this question is not binding, and said defendants cannot lawfully accept such decision of the Supreme Court of Arizona until the same is approved by the federal courts, to which the protection of said trust funds is committed by the Enabling Act, and that said bonds so proposed to be surrendered bear definite maturity dates, and they are not callable under any pretense prior to such maturity dates, for the reason that by the statutes and proceedings under which they were issued, contracts were created between Maricopa County and all future holders of said bonds, binding said county to pay interest thereon at the rates therein specified until the due date of said bonds. Said contracts were expressly authorized by Chapter 2 of Title 52, Revised Statutes of 1913, and Chapter 1, of Title 52, Revised Statutes of 1913, is not applicable to said contracts because:

(a) Said Chapter 1 was originally an Act of Congress, passed in the year 1890, for the refunding of certain territorial indebtedness then existing, and that the authority to fund or refund indebtedness under said act and supplements thereto expired January 1, 1897, and such authority was not revived by the reenactment of said statute upon statehood;

(b) Said statute did not authorize the refunding of bonds which were not due or redeemable according to their terms without the consent of the holders of such bonds;

(c) Said Act of Congress of 1890 provided for the refunding of county bonds with territorial bonds and,

even though re-enacted, upon statehood, by the first legislature of Arizona, was inoperative by reason of Section 5 of Article 9 of the Arizona State Constitution which prohibits the creation of state indebtedness for such purpose;

(d) If said statute had or could have authorized a redemption of county bonds prior to their maturity, such power was repealed by the later enactment of Chapter 2, Title 52, Revised Statutes of 1913, by reason of inconsistent provisions contained in said Chapter 2, as well as by the express provisions of the statutes of Arizona providing that a later statute repeals a prior statute covering the same subject, even though the two statutes are not inconsistent;

(e) The bonds described in the complaint contain positive covenants and agreements of Maricopa County to pay interest thereon at the specified rates until their maturity dates and these covenants and agreements were ratified and approved by the state legislature by Chapters 54 and 86 of Arizona Session Laws, 1921, ratifying and approving said bonds after the form of said bonds containing said covenants and agreements had been made a matter of public record, thereby precluding the redemption and call of said bonds in violation of said covenants and agreements.

The amount involved in this case exceeds the sum of Three Thousand Dollars.

The affidavits filed in support of the motion for summary judgment presented no defense to the complaint. The facts show that jurisdiction of the federal courts is properly invoked, that a case is presented for

the exercise of independent judgment of the federal courts upon the contracts involved, and the exercise of such independent judgment must necessarily result in granting the relief sought by the plaintiff under the allegations of the complaint and the prayer thereof, such relief is not limited to a declaratory judgment.

ARGUMENT

Preliminary

Assignment No. 1 is directed to the refusal of the District Court to grant declaratory relief. Assignment No. 2 is directed to the refusal of the District Court to grant injunctive relief. Both of these assignments are based upon the right of the plaintiff as a citizen and taxpayer of Arizona to prevent the depletion and diminution of the trust funds created by the Arizona Enabling Act. Inasmuch as the arguments applicable to the two assignments are similar, we shall discuss the assignments collectively.

Three primary questions are presented for decision:

1. Have the federal courts jurisdiction to exercise their independent judgment on the merits of the case under the decision of the Supreme Court, in *Erie R. Co. v. Tompkins*, notwithstanding the opinions of the State Supreme Court in the two mandamus cases?

2. What is the true interpretation of the contracts created by the issuance of plaintiff's bounds?

3. Will the surrender of the bonds involved in this

case as proposed by defendants, constitute a breach of the trusts created by the Arizona Enabling Act, which may be prevented by plaintiff as a citizen and taxpayer?

The federal courts have jurisdiction and are required to exercise their independent judgment on the merits of this case, notwithstanding the opinions of the State Supreme Court in the two mandamus suits.

(a) The case of *Erie R. Co., v. Tompkins*, 82 L. ed. 1188, 1194, 304 U. S. 64, 58 Sup. Ct. Rep. 817, 114 A. L. R. 1487, has no application to rights having their origin in the Constitution and statutes of the United States.

Clearfield Trust Co. v. U. S. 87 L. ed. 524 (Adv.)
63 Sup. Ct. Rep. 573 (Adv.)

Doench v. Federal Deposit Ins. Corp.,
86 L. ed. 956, 961, 315 U. S. 447,
62 Sup. Ct. Rep. 676.

Deitrich v. Graeny, 84 L. ed. 694, 309 U. S. 190,
60 Sup. Ct. Rep. 480.

Jackson County v. U. S. 84 L. ed. 313, 316,
308 U. S. 343,
60 Sup. Ct. Rep. 285.

United States v. Pink, 86 L. ed. 796, 818,
315 U. S. 203,
62 Sup. Ct. Rep. 552.
Prudence Realization Carp., v. Geist,
86 L. ed. 1293, 1298,

316 U. S. 89,
62 Sup. Ct. Rep. 978.
Bailey v. Central Vermont R. Co.,
87 L. ed. 1030 (Adv.)
63 Sup. Ct. Rep. 1062 (Adv.)

Sola Electric Co. v. Jefferson Electric Co.,
317 U. S. 173,
87 L. ed. 150, 152 (Adv.)
63 Sup. Ct. Rep. 172 (Adv.)

Fisher v. Whiton, 317 U. S. 217,
87 L. ed. 167 (Adv.)
62 Sup. Ct. Rep. 175 (Adv.)

Garrett v. Moore McCormack Co.,
317 U. S. 239,
87 L. ed. 183, 185 (Adv.)
63 Sup. Ct. Rep. 246 (Adv.)

Wragg v. Federal Land Bank of New Orleans,
317 U. S. 325,
87 L. ed. 273, 275 (Adv.)
63 Sup. Ct. Rep. 273 (Adv.)

United States v. Pelzer,
312 U. S. 399,
85 L. ed. 913,
61 Sup. Ct. Rep. 659.

Lyon v. Mutual Health Benefit & Accident Assn.,
305 U. S. 484,
83 L. ed 303, 308,
59 Sup. Ct. Rep. 297.

Helvering v. Leonard,
310 U. S. 80,
84 L. ed. 1087, 1092,
60 Sup. Ct. Rep. 780.

Erie R. Co. v. Tompkins, has never been considered as having application to cases involving a question arising under the federal Constitution or federal laws or even under non-statutory rights or claims based on federal policy. The rule of *Swift v. Tyson*, 16 Peters, 1, 10 L. ed. 865, overruled by the *Erie* case was limited to so-called questions of general law. The federal courts always recognized the binding effect of state statutes and rules of practice, subject, however, to the rule that such local statutes or rules of practice could not be allowed to defeat or impair a federal right.

Davis v. Wechsler, 263 U. S. 22,
68 L. ed. 143, 145,
44 Sup. Ct. Rep. 13.

Ward v. Love County,
253 U. S. 17,
64 L. ed. 751,
40 Sup. Ct. Rep. 419.

Appelby v. New York,
271 U. S. 364,
70 L. ed. 992, 999,
46 Sup. Ct. Rep. 569.

Since *Erie R. Co. v. Tompkins* this rule remains the same.

Municipal Investors' Assn., v. Birmingham,
316 U. S. 153,
86 L. ed. 1341, 1343,
62 Sup. Ct. Rep. 975.

Washington University v. Gorman,
153 S. W. (2d) 35, 38.

The opinion in the *Erie* case was careful to point out that the rule that federal courts were bound to follow the decisions of the courts of the state was subject to the exception of "matters governed by the federal Constitution or by acts of Congress". This exception was taken from Section 34 of the *Federal Judiciary Act*, 28 U. S. Code Ann. 725. The exception was recognized in the opinion in a case filed on the same day by Justice Brandeis as the decision in the *Erie* case.

Hinderlider v. LaPlatta R. & Cherry Creek
D. Co., 304 U. S. 92; 82 L. ed. 1202,
58 Sup. Ct. Rep. 803,

and also in a case which was under consideration at the same time as the *Erie* case, involving the impairment of the obligation of a contract. The opinion in this case was filed shortly after the decision in the *Erie* case.

J. D. Adams Mfg. Co. v. Storen,
304 U. S. 307,
82 L. ed. 1365,
58 Sup. Ct. Rep. 251.

In point, also, on this question is the long line of

cases decided since *Erie R. Co. v. Tompkins*, holding that that case has no application to cases in which jurisdiction of federal courts is based upon impairment of the obligation of a contract.

Municipal Investors' Assn., v. Birmingham,
316 U. S. 153,
86 L. ed. 1341, 1343,
62 Sup. Ct. Rep. 975.

Irving Trust Co. v. Day,
314 U. S. 556,
86 L. ed. 452, 457,
62 Sup. Ct. Rep. 398.

Wood v. Lovette,
313 U. S. 362,
85 L. ed. 1404, 1407,
61 Sup. Ct. Rep. 983.

Higginbotham v. Baton Rouge,
306 U. S. 535,
83 L. ed. 968, 971,
59 Sup. Ct. Rep. 705.

American Toll Bridge Co. v. RR. Commission of Calif.,
307 U. S. 486,
83 L. ed. 1414, 1419,
59 Sup. Ct. Rep. 948.

Note: 140 A. L. R. 731

Cone v. Rorick, 112 Federal (2d) 894, 897.

Washington University v. Gorman, 158 S. W. (2d) 35, 38 (Mo.)

However, federal jurisdiction in this case exists independently of showing impairment of contract obligations or deprivation of property without due process. There is to be enforced in this case, through the agency of the plaintiff, the right of the United States to preserve the proceeds of land donated by it for the purposes declared by the Enabling Act. This is a federal right, and in its enforcement federal courts are not limited to merely preventing the state courts from overstepping the bounds set by Section 10 Article 1 or the Fourteenth Amendment to the Federal Constitution, but are charged with the duty of enforcing the right of the federal government according to their own ideas of right and justice.

Clearfield Trust Co., v. U. S.,
87 L. ed. 524 (Adv.);
63 Sup. Ct. Rep. 573 (Adv.)

McNabb v. U. S., 318 U. S. 332;
87 L. ed. 579;
60 Sup. Ct. Rep. 608.

The decisions of this court have consistently recognized the fact that the case of *Erie R. Co., v. Tompkins* does not apply where a federal question is involved.

Getz v. Nevada Irrigation Dist., 112 Fed. (2d), 495, 497.

Alameda County v. U. S. 124 Fed. (2d) 612, 616.

Toole County Irrigation Dist., v. Moody, 125 Fed. (2d) 498.

In the *Getz* case, supra, this court pointed out that the alleged contract was not impaired because it was modified in accordance with a provision therein contained.

In the *Alameda County* case, supar, this court says:

> "Under the rule of Erie R. Co. v. Tompkins, supra, state law is applicable to all cases except 'in matters governed by the Federal Constitution or by acts of Congress'. The exception has been enlarged to include also treaties."

In the *Toole County Irrigation District* case, supra, this court held that it was bound by the later decisions of the Supreme Court of Montana in determining the nature of the obligation created by the issuance of the bonds there involved. Jurisdiction was based on diversity of citizenship. The existence of a federal question was not alleged nor could it have been because no subsequent statutes, ordinances or resolutions were enacted. The conflicting decisions of the Supreme Court of Montana were all made after the issuance of the bonds involved so that case obviously fell within the rule of *Erie R. Co. v. Tompkins* as a diversity of citizenship case in which the federal courts are bound to apply the law of the state as it exists at the time. Obviously no mention of the fact that the rule of *Erie R. Co. v. Tompkins* did not apply to cases involving a federal question was called for in that case.

Where a case is brought in the United States District Court, federal jurisdiction is determined from the allegations of the complaint. If the complaint sets up a claim, apparently in good faith and not frivolous,

that the plaintiff has or claims a federal right, federal jurisdiction is established.

Pacific Electric Ry. Co. v. Los Angeles,
194 U. S. 112,
48 L. ed. 896,
24 Sup. Ct. Rep. 586.

Illinois Central RR. Co. v. Adams,
180 U. S. 28, 36,
45 L. ed. 410,
21 Sup. Ct. Rep. 251

City Ry. Co. v. Citizens RR. Co.,
166 U. S. 557, 562,
41 L. ed. 1114,
17 Sup. Ct. Rep. 653.

Cuyahoga River Power Co., v. Akron,
240 U. S. 462,
60 L. ed. 743,
36 Sup. Ct. Rep. 402,

Mosher v. Phoenix, 287 U. S. 29,
77 L. ed. 148,
53 Sup. Ct. Rep. 67.

South Covington etc. Ry. Co., v. Newport,
259 U. S. 97,
66 L. ed 843,
42 Sup. Ct. Rep. 418.

The case made by the complaint in this case falls squarely under the above decisions of the Supreme Court of the United States. The bonds which the de-

fendants propose to surrender to Maricopa County at a substantial loss in deference to the opinions of the Supreme Court of the State of Arizona, were purchased with funds derived from the sale of lands donated to the State of Arizona by the United States in the Arizona Enabling Act. Under the provisions of that act the lands and all proceeds derived therefrom were declared a trust fund, and it was provided that such lands and proceeds of the sale thereof should be held inviolate for the purposes for which they were donated, which in this particular instance was the support of the common schools in the state. It was made the duty of the Attorney General of the United States to enforce the provisions of the Enabling Act. It was further provided that nothing in the act contained should prevent the state or any citizen of the state from enforcing the provisions of the Enabling Act. This provision conferred no rights on citizens of the state to enforce the conditions and limitations of the trust, but left to them unimpaired whatever rights they had under the state law. The Supreme Court of Arizona has held that under the law of the state, citizens and taxpayers of the state have the right to enforce the trusts in question. The Enabling Act, having created th trust, set forth the purposes and limitations thereof. It follows, any action to enforce such purposes and limitations arises under a federal statute and comes within the jurisdiction of the federal courts.

Sec. 41, Title 28 U. S. Code Ann.

No one will deny that if the Attorney General of the United States brought an action to enforce the provisions of the trust, the federal courts would have juris-

diction, and the federal law would determine the proper construction of the trust created by the Enabling Act. When a citizen of a state under the law of the state takes advantage of the provision of the Enabling Act permitting him to enforce the trust, he is enforcing the same federal right that the Attorney General of the United States would enforce if he brought the action. The nature of the right as a federal right is not affected by the agency that enforces it.

The trust created by the several Enabling Acts of recently admitted states are of the highest order. The federal government, having knowledge of the fact that school lands donated to some of the older states had been dissipated, in the more recent Enabling Act guarded the lands and the proceeds of lands donated thereby by very stringent provisions. Plainly the right to protect these funds on behalf of the federal government requires the federal courts to exercise their independent judgment under the authorities above cited.

II

The statutes of Arizona in effect when plaintiff's bonds were issued are not capable of being construed so as to make plaintiff's bonds callable before their maturity dates.

Briefly stated, our contention under this heading is that the Supreme Court of Arizona, in the two mandamus cases, *Maricopa County v. Osborn*, 125 Pac. (2d) 703, and *Maricopa County v. Osborn*, 136 Pac. (2d) 270, took an Act of Congress, passed in 1890, for the purpose of refunding certain territorial and municipal obligations which, according to its terms as

extended by supplemental acts, ceased to operate in 1897, became a dead letter after statehood by reason of being in conflict with the provisions of the State Constitution, was rewritten as a new act in the Revised Code of 1928, and was never used until 1942, and without consideration of its history, and merely a superificial examination of its language, gave it an interpretation wholly at variance with its original meaning and construction by the territorial legislature and the courts, and its subsequent construction by the state legislature.

1. Construction of statutes under which bonds were issued.

Plainly the bonds involved in this case and the coupons attached thereto do not provide for call before maturity. (T. 15, 26). Beyond question both issues of bonds and coupons are in exact compliance with Chapter 2, Title 52, Revised Statutes of 1913 (See Exhibit L this brief. Also T. 5-9). After their form was determined they were ratified by acts of the legislature (T. 18-28). The argument is advanced, however, by the defendants and it has been sustained by the Supreme Court of Arizona that Chapter 1, Title 52, modifies Chapter 2, Title 52, so as to authorize the call of bonds issued under the last-named chapter. Specifically, the argument is that the following language in Section 5252, Arizona Revised Statutes of 1913,

> "and for the purpose of paying, redeeming and refunding all or any part of the principal and interest of the existing and subsisting state legal indebtedness and also that which may at any time

> become due or is now or may be hereafter authorized by law, the said commissioners shall from time to time issue negotiable coupon bonds of this state when the same can be issued at a lower rate of interest than previously paid on state indebtedness and to the profit and benefit of the state,"

authorizes the call of outstanding state bonds that have been issued with definite maturity dates, before their maturity, and the following words in Section 5260 Arizona Revised Statutes 1913,

> "and said loan commissioners shall provide for the redeeming or refunding of the county, municipal and school district indebtedness upon the official demand of said authorities in the same manner as other state indebtedness now allowed or that may be hereafter allowed by law to said county municipality or school district upon official demand by said authorities,"

extends the authority of the state loan commissioners to the calling of county, municipal and school district bonds that have been issued with definite due dates before their mautrity.

2. Origin of Chapter 1, Title 52, Revised Statutes of 1913.

The origin of this statute is revealed by an examination of Arizona territorial and state legislation and is established by the Supreme Court of Arizona in the case of Maricopa County v. Osborn, 136 Pac. (2nd) 270, 272 (adv) in which that court shows that Paragraph 2987 Arizona Revised Statutes 1887 though

extended by supplemental acts, ceased to operate in 1897, became a dead letter after statehood by reason of being in conflict with the provisions of the State Constitution, was rewritten as a new act in the Revised Code of 1928, and was never used until 1942, and without consideration of its history, and merely a superificial examination of its language, gave it an interpretation wholly at variance with its original meaning and construction by the territorial legislature and the courts, and its subsequent construction by the state legislature.

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long since repealed was continued in force by Section 5258, R. S. of 1913, which is a part of said Chapter 1, Title 52, by reason of the fact that it was adopted by reference by the Act of Congress of June 25, 1890, which later became said Chapter 1, Title 52.

a. Act of Congress of June 25, 1890, limited to existing bonds. (See Exhibit G, this Brief).

The meaning of the Act of Congress of June 25, 1890 was definitely understood when the act was adopted. It did not extend to the refunding of bonded indebtedness incurred after its date and ended with floating indebtedness incurred to December 31, 1890. (Arizona Revised Statutes, 1901, pages 104-109. See Exhibit G, this Brief). By the Act of August 3, 1894, it was extended as to territorial warrants only, issued prior to December 31, 1895. (Arizona Revised Statutes, 1901, pages 109-110. See Exhibit H, this brief.) And by the Act of June 6, 1896, was extended to both territorial and county, municipal and school district indebtedness incurred up to January 1, 1897. (Gage vs. McCord, 5 Ariz. 227, 51 Pac. 977. See Exhibit I, this brief.) It never extended to any indebtedness of any kind incurred after the last mentioned date. The foregoing appears from the language of the acts of Congress, from reports of the committees recommending adoption of said act, (see Exhibits A, B, C and D attached to this brief,) and from the acts of the territorial legislature (see Act 79 Session Laws of 1891 and Act 33 Session Laws of 1895) and the decisions of the Supreme Court of the Territory.

Gage v. McCord, 5 Ariz. 227; 51 Pac. 977, 978.
Schuerman v. Territory, 7 Ariz. 62; 60 Pac. 895.

9. Act of Congress June 25, 1890 did not authorize call of bonds before maturity.

It was definitely understood that the Act of Congress of June 25, 1890, did not authorize the refunding of any bonds before their due dates unless they were voluntarily surrendered by the holders thereof. This appears from the report of of the committee of Congress and the official statement of Mr. Murphy, a former governor of Arizona, in his presentation to Congress, as an Arizona territorial delegate (see Exhibits "C" and "D" this brief). If there is otherwise any doubt as to the meaning of an act of Congress reference to the reports of the committee in charge of the legislation will be accepted as determining the question.

Binns v. U. S. 194, U. S. 486, 495, 48 L. ed. 1087, 24 Sup. Ct. Rep. 816.

Wright v. Vinton Branch 300 U. S. 440, 463, 81 L. ed. 736, 57 Sup. Ct. Rep. 556.

It is, therefore, clear that the Act of Congress of June 25, 1890, which afterwards became Chapter 1, Title 52, Revised Statutes of 1913, as it stood before Arizona became a state, did not authorize what the Supreme Court of Arizona has now held it did authorize in 1919 and 1921.

Maricopa County v. Osborn, 125 Pac. (2nd) 703.

Thus the decision of the Supreme Court of Arizona must be erroneous unless the meaning of said Act of Congress of June 25, 1890 was changed in some manner before it became Chapter 1, Title 52, Revised Statutes of 1913. Said Act of June 25, 1890, became a law of the State of Arizona by virtue of Section 2, Article 22, of the state constitution insofar as it was not inconsistent with said constitution and as such law of the state it was subject to all interpretations it had theretofore received.

Mallory v. Pioneer Southwestern Stages, 54 Fed. (2nd) 559, 562,

Stevirmac Oil & Gas Co. v. Smith, 259 Fed. 650, 654,

Patterson v. Rousney, 159 Pac. 636, 639.

The interpretations placed upon said act before statehood have the same effect as interpretations placed thereon after statehood.

Frick Co. v. Oats, 94 Pac. 682, 686.

Said Chapter 1, Title 52, was thereafter enacted without change so far as the questions here involved are concerned as Chapter 29 of the first special session of the first legislature of the State of Arizona. Such re-enactment continued the statute with the meaning that had theretofore been attributed to it by the courts.

Heald v. District Court, 254 U. S. 20, 22, 65 Law ed. 106, 41 Sup. Ct. Rep. 42,

Johnson v. Manhattan R. Co., 289 U. S. 479, 77 L. ed. 1331, 1346, 53 Sup. Ct. Rep. 721,

Moore v. Chilson, 26 Ariz. 244, 254, 224 Pac. 818.

The same rule applies in case of executive or legislative construction.

National Lead Co. v. U. S., 252 U. S. 140, 64 L. ed. 497, 499, 40 Sup. Ct. Rep. 237,

U. S. v. Hermanos y Compania, 209, U. S. 337, 339, 52 Law ed. 821, 28 Sup. Ct. Rep. 532.

Thereafter the statute was made a part of the compilation known as the Revised Statutes of 1913. Its inclusion in said compilation under the authority of Chapter 64, third special session of the first legislature of the State of Arizona (Arizona Session Laws 2nd and 3rd Spec. Ses., 1st Leg. (1913) p. 17, second section) did not change its meaning for Section 7 of said act expressly provides the code commissioner shall have no power to change or modify any law, and the rule is well established that in the case of such a compiled code as distinguished from a revised code, the separate enactments retain the meanings and relative status they had before the compilation.

Waterman S. S. Co. v. Brill, 9 So. (2nd) 23, 27,

Southern Pac. Co. v. Gila County, 56 Ariz. 499, 503, 109 Pac. (2nd) 610,

Warner vs. Goltra,
79 Law ed. 254, 259
55 Sup. Ct. Rep. 46,

State v. Purcell, 228 Pac. 796 (Idaho),

Gembler v. Seward, 285 N. W. 542, 545 (Neb.),

Paulson v. Hurlburt, 183 Pac. 937, 939 (Or.)
The Supreme Court of Arizona has declared that the passage of the act along the course above mentioned did not have the effect of eliminating the long-forgotten Paragraph 2987 Revised Statutes of 1887, notwithstanding its repeal.

Maricopa County v. Osborn, 136 Pac. (2nd) 270, 272 (Adv.)

We think it is clear from the foregoing that Chapter 1, Title 52, Revised Statutes of 1913, cannot be construed so as to authorize the call of plaintiffs' bonds before their maturity dates and that the Supreme Court of Arizona erred in so construing it in the first mandamus suit, it not being advised of the origin of the statute in that case.

c. Repeal by re-enactment of Chapter 2, Title 52.

Chapter 2, Title 52, Revised Statutes of 1913, was re-enacted in its entirety as Chapter 20 of the acts of the third special session of the first legislature of the State of Arizona (See Ariz.

Rev. Stat. 1913, Chap. II, Title 52). This undoubtedly was preparatory to its inclusion in the 1913 compilation. Chapter 1 of said Title 52 was not so re-enacted (See Marginal Notations, Ariz. Rev. Stat. 1913, Chap. I, Title 52). Thus, the two chapters went into the 1913 compilation with said Chapter 2 as the later enactment and undoubtedly repealing all provisions in said Chapter 1, the earlier enactment, which were inconsistent with said Chapter 2. Said Chapter 2 provided for the issuance of bonds with definite maturity dates and both in the title and the body of the act provided for the redemption of said bonds *after* but not before maturity, so any provision in said Chapter 1, providing for *redemption* before maturity, was unquestionably inconsistent with the provision in said Chapter 2, providing for *redemption* after maturity and was repealed by said chapter

City of Bisbee v. Cochise County, 44 Ariz. 233, 241, 36 Pac. (2nd) 557,

Biles v. Robey, 43 Ariz. 276, 281, 30 Pac. (2nd) 841,

Irvine v. Frohmiller, 58 Ariz. 391, 120 Pac. (2nd) 404.

Furthermore, there has been in the statutes of Arizona since an early date, a statute which was dropped out in 1901, but re-enacted in 1907, and again re-enacted by the first legislature of the state at the third special session, (Sec. 5553, Title 58 Revised Statutes 1913) just prior to the

adoption of Chapter 2, Title 52, a statute which declared that when a later statute covered a subject an earlier statute should not be deemed continued merely because it was consistent with the later statute but should be deemed abrogated and repealed. (See Sec. 5553 Revised Statutes of 1913). Under this provision certainly Chapter 2, Title 52, covering the subject of redemption of bonds and providing that redemption might be made after maturity, certainly repealed that part of Chapter 1, Title 52, which according to defendants' contention provided for redemption at any time.

Olson v. State, 36 Ariz. 294, 301, 285 Pac. 282,

Murphy v. Utter, 186 U. S. 95, 105, 46 Law ed. 1070, 22 Sup. Ct. Rep. 776,

District of Columbia v. Hutton, 143 U. S. 18, 27, 36 L. ed. 60, 12 Sup. Ct. Rep. 369,

Grant v. Baltimore & Ohio R. Co., 66 S. E. 709 (W. Va.),

Harris v. Cooley, 152 Pac. 300 (Cal.).

Chapter 64 of the Acts of the third special session of the first legislature providing for the compilation of all laws in force upon the adjournment of the third special session of the first legislature, expressly provided that the code commissioner should have no power to change the meaning of any of the laws (Sec. 7, Ariz. Ses. Laws 2nd and 3rd Spec. Ses., 1st Leg. (1913) Second Section). It is difficult to discover anything that

the first legislature of the State of Arizona might have done to make more clear its intention that the bonds to be issued under Chapter 2, Title 52, should not be impaired by anything contained in Chapter 1, Title 52.

3. Many other reasons exist why the refunding provided for by Chapter 1, Title 52, cannot be construed as authorizing the refunding of bonds issued under Chapter 2, Title 52. Among these are:

a. Chapter 1, Title 52, Revised Statutes of 1913, never did authorize the refunding of indebtedness to be created after the passage of the statute. The original Act of Congress of June 25, 1890, from which the language was derived, required the boards of supervisors to report their bonded and outstanding indebtedness, meaning existing indebtedness, and the subsequent words "and they shall issue bonds for any indebtedness * * * that may hereafter be allowed by law" meant indebtedness existing but not yet allowed when the act was passed. This is made clear by the proviso in Section 15 of the act to the effect that, "existing and outstanding indebtedness, together with such warrants as may be issued for the necessary and current expenses of carrying on territorial, county, municipal and school government for the year ending December 31, 1890, may also be funded and bonds issued for the redemption thereof," (see pages 108-109 Revised Statutes 1901).

The effect of the proviso was to extend not to

limit the language in the preceding section. The words, "allowed by law" had reference to allowance of claims by the boards of supervisors as found in the then existing statutes, providing for the government of counties.

Section 407 of the Revised Statutes of 1887 provided "no payment shall hereafter be made from the treasury of any of the counties of this territory unless the claim or demand shall be duly allowed according to the provisions of this act." The word, "allowed", is frequently used in the same sense in the succeeding sections which provide for the allowance of claims against the county.

A similar method for establishing school district indebtedness is provided for in Section 1495 Revised Statutes of 1887. The word "allowed" with reference to indebtedness retained the same meaning in the Revised Statutes of 1913, Sections 2433-2439 Revised Statutes of 1913. The code commissioner and legislature in preparing the 1928 Code unquestionably so understood the meaning of the word "allowed" and changed the same to "allowed to be incurred" so as to provide for the refunding of indebtedness to be incurred in the future (Sec. 2654 Revised Code 1928).

b. The intent of Congress in the Act of June 25, 1890, was clearly to reduce the high rate of interest on county indebtedness by permitting the same to be refunded as teritorial indebtedness. It so appear from the committee report (Exhibit "A"). The act provided that bonds should

be issued by the loan commissioners as territorial bonds without limiting the obligation of the territory (see Pars. 2041, 2047, pages 104-106 Revised Statutes of 1901). The provision in Paragraph 2041 that the faith and credit of the territory is pledged to secure the bonds clearly applies to all the indebtedness, local as well as territorial, refunded under the act. Besides, there was an express provision that if there was not sufficient money in the interest fund the interest should be paid out of the general fund of the territory (Par. 2050). True, the act contemplated, and the territorial act passed to supplement the same (Act 79, page 97 Session Laws 1891) provided, that the local subdivisions should reimburse the state, but the faith and credit of the state was back of the bonds. That such was the proper interpretation of the act is shown by Paragraph 6th of Article 20 of the State Constitution which provided that all debts of the counties, valid and subsisting at the time of the passage of the Enabling Act, were assumed by the state, but the same constitution made it impossible for the state to assume any county indebtedness after statehood, for Section 5 of Article 9 of the state constitution absolutely prohibited the state from incurring any indebtedness except for certain limited purposes therein stated. The result was that if Section 5260 Revised Statutes of 1913 had authorized the refunding of county indebtedness by the state loan commissioners it would have been in violation of the state constitution. The code commissioner and legislature in 1928, realizing this changed the language of the act so as to pro-

vide that county bonds issued by the loan commissioners should not be secured by the faith and credit of the state and that the state should have no obligation thereon except to levy taxes in the counties and collect the same (Sec. 2654 Revised Code 1928).

c. Long continued construction of act should govern.

The long continued construction of the act from its adoption in 1890 down to 1942 is at variance with the construction contended for by defendants. Beginning with Section 15 of the Act of 1890 (Exhibit "F") and the extensions by the Acts of 1894 (Exhibit "G") and 1896 (Exhibit "H") the statements in the reports of the Congressional committees on those acts (Exhibits "A", "B", "C", "D") statement of Governor Murphy (Exhibit "D"), the fact that the territorial acts adopted in furtherance of intent to call bonds not voluntarily surrendered, the numerous acts passed between 1896 and statehood, providing for the issuance of optional bonds (Exhibit "E" in Appendix to this brief), which were all at variance with the interpretation contended for by defendants, and the fact that no attempt was made after statehood to refund unmatured bonds but other refunding acts were passed to provide for refunding only optional bonds (Chapt. 39 Session Laws 1927 and Chapters 74 and 75 Session Laws 1935), and the fact that Title 2, Chapter 52, and the chapter providing for the issuance of school district bonds where the indebtedness was less than 4% (Secs. 2736-2749 Revised Stat-

utes of 1913), all provided for definite due dates, the former providing for redemption of the bonds only after maturity, and the latter providing for a sinking fund to redeem on maturity, all show a construction of the act at variance with defendants' contention.

d. Subsequent legislative construction of act limits it to past due and optional bonds.

The fact that the legislature enacted Chapter 39 Session Laws of 1927 and Chapter 74 and Chapter 75 Session Laws of 1935, providing for the refunding of county, municipal and school district bonds and state bonds, respectively, only when they were callable, is clearly a subsequent legislative construction of the acts under which the bonds were issued to the effect that the provision in Chapter 1, Title 52, providing for refunding was not available to force the call of such bonds when they were not optional.

Moore v. Pleasant-Hassler Construction Co., 51 Ariz. 40, 48, 76 Pac. (2nd) 225,

Alexander v. Mayor, 5 Cranch 1, 7, 3 Law ed. 19.

The case of Moore v. Pleasant-Hassler Construction Company, supra, is a definite decision by the Supreme Court of Arizona to the effect that where a subsequent act of the legislature shows what was the intent of the legisalture in adopting a prior statute, such intent will be followed by the courts. It will be noted in this case

the meaning of the prior act was not drawn in question until after the subsequent acts of the legislature were passed so that this case comes under the dissenting as well as the majority opinion in the Pleasant-Hassler case.

e. Chapter 1, Title 52 applies to matured and optional bonds *only*.

It is plain that the language of Section 5260, Revised Statutes of 1913, independently considered by this court, ought not to be construed as having the drastic effect of permitting the call of plaintiffs' bonds before maturity. Inasmuch as this language is a verbatim reenactment of the Act of Congress of June 25, 1890, and must have the same meaning as the original statute, to give it that construction requires us to assume that Congress deliberately enacted an unconstitutional statute. The Act of Congress of June 25, 1890 applied only to bonds which were outstanding on the date of its enactment. Such a construction, therefore, requires us to assume that Congress intended to compel the holders of outstanding bonds, which were not redeemable prior to their maturity, to surrender their bonds for payment, which would make the act unconstitutional on the ground that it impaired the obligation of existing contracts. While Section 10 of Article I of the Federal Constitution does not apply to Congress, nevertheless such an act would be void as depriving the holders of the bonds of their property without due process of law.

Choate v. Trapp, 224 U. S. 665, 56 Law ed. 941, 32 Sup. Ct. Rep. 565,

Lynch v. United States, 292 U. S. 571, 78 L. ed. 1434, 54 Sup. Ct. Rep. 840.

Such an interpretation is unthinkable, and is manifestly contrary to the intent of Congress as is clearly shown by Exhibit D. If the Act of Congress of June 25, 1890 had no such intent, then, obviously, the same language had no such intent when it was reenacted verbatim by the first legislature of the State of Arizona.

Considered from the standpoint of the first legislature of the State of Arizona, defendants' construction requires us to assume that that legislature intended to make callable before the beginning of the option period, all of those bonds issued prior to statehood which had not yet reached the option period (See Exhibit E attached to this brief) and this clearly would render said act unconstitutional as impairing the obligation of the contract created by the issuance of those bonds. It is the rule in Arizona as well as elsewhere that where two constructions of an act are possible, one of which will render the act unconstitutional, that construction which renders it valid, will be adopted.

McManus v. Industrial Commission, 53 Ariz. 22, 28, 85 Pac. (2nd) 54,

Automatic R. M. Co. v. Pima Co., 36 Ariz. 367, 373, 285 Pac. 1034,

Prescott Courier, Inc. v. Moore, 35 Ariz. 26, 34, 274 Pac. 163.

State of Arizona, v. Hooker, 45 Ariz. 202, 206, 41 Pac. (2nd) 1091,

Stewart v. Robinson, 45 Ariz. 143, 150, 40 Pac. (2nd) 979,

Even if no constitutional question were involved the reasonable construction would be limit the refunding under Chapter 1, Title 52, to cases where the bonds were optional or past due or voluntarily surrendered by the holder. This was the construction arrived at by the Supreme Court of Missouri in the only case that we have found squarely upon the point.

State v. Smith, 96 S. W. (2nd) 348, 351 (Mo.)

f. Provisions of Chapter 1 not to be read into Chapter 2.

Ordinarily when an act or a chapter contains a complete procedure for the issuance of bonds and another act or chapter contains provisions for the issuance of different bonds, the provision of the latter act will not be applied to the former act for the presumption is that each of the acts were intended to be complete in themselves and the provisions of the one should not be read over into the other. Thus, in Arizona, there has existed side by side since 1913, the act providing for the issuance of bonds in excess of 4% which was applicable to school districts (Chapter 2, Title 52, Revised Statutes of 1913) and the act providing for the issuance of bonds by school districts for indebtedness less than 4% (Sections 2736-2749 Revised Statutes of 1913. It has never been contended that the provisions of one of these acts was applicable to bonds issued under

the other act, and the Supreme Court of Arizona has definitely held that such is not the case.

Armer vs. Wade, 48 Ariz. 1, 58 Pac. (2nd) 525
This principle is equally applicable to this case. The provisions of Chapter 1, Title 52, have no application to the provisions of Chapter 2, Title 52, because said Chapter 2 is complete in itself and there is nothing to indicate that the bonds therein provided for were to be added to or detracted from by statutes providing for other and different bonds. The principle is applied in other states as well as in the State of Arizona.

State v. Keith, 66 Pac. (2nd) 1059 (Okla.)

g. Section 5260, which is found in Chapter 1, Title 52, Revised Statutes of 1913, does not say that bonds of counties, municipalities and school districts shall be callable, nor does it say that they shall be refundable when the refunding bonds can be issued at a lower rate of interest or to the profit and benefit of the county. It merely says that:

> "Said loan commissioners shall provide for the redeeming or refunding of the county, municipal and school district indebtedness upon the official demand of said authorities in the same manner as other state indebtedness and they shall issue bonds for any indebtedness now allowed or that may be hereafter allowed by law to said county, municipality or school district upon official demand by said authorities."

Refunding "in the same manner" covers only the procedure for refunding and does not purport to give to the counties, municipalities or school districts the substantive right to issue notice and call the outstanding bonds.

Wilders S. S. Co. v. Low, 112 Fed. 161, 164.

It is a little absurd to say that under this general provision a small issue of school district bonds in a remote part of the state may be called by publishing a notice in the county where the state capital is situated.

h. *Bonds were ratified in form issued.*

After a contract for the 1919 issue of bonds had been entered into between the county and the purchasers, the legislature of the state adopted Chapter 54 Session Laws of 1921 (See Exhibit J this brief) which ratified these bonds and the contract for the purchase thereof (T. 18). The contract for the purchase specifically provided for the delivery of bonds running for the period of years mentioned in the resolution for their issuance, which was of record. The form of the bonds had been adopted by the board of supervisors long prior to the passage of this act and the bonds had been printed (T. 18). We think it is clear that it must be presumed that the legislature in ratifying these bonds and this contract knew what the bonds and the contract contained and they also must be presumed to have known what the law was, so when they ratified these bonds they made them valid as they stood, and that if there had been any variation between the bonds as issued and the law that variation was

eliminated, for it was the very intent and purpose of the act that these bonds should be made good as they stood.

Ryan v. Humphries, 150 Pac. 1106, 1108.

For the second issue of bonds there is a similar ratification by Act 86 of the 1921 Session Laws. (See Exhibit K this brief.) When this ratification act was passed these bonds had not been issued but the form had been adopted and had been made a matter of public record (T. 28). This act ratifies the bonds as they stand but there was at the time no contract of purchase. While the case is not as strong as in the case of the first issue, in that no purchase contract was ratified, we think here too that the legislature ratified the bonds as they stood.

III

The surrender of the bonds involved in this case as proposed by defendents, will constitute a breach of the trust created by the Arizona Enabling Act, which may be prevented by plaintiff as a citizen and taxpayer.

1. Plaintiff's right as a citizen and taxpayer to enforce the trusts created by the Enabling Act is established.

Rowlands v. State Loan Board,
24 Ariz. 116, 123,
207 Pac. 359.

Boyce v. Pima County,
24 Ariz. 259,
208 Pac. 419.

2. We have shown that this right may be enforced in the federal courts under the heading, "Statement of Jurisdiction", supra.

3. That the surrender of the bonds at a substantial loss as is proposed by the defendant, State Loan Commissioners, will constitute a breach of trust, is clear.

(a) It is the duty of the treasurer and other defendants constituting the State Loan Board, to resist the effort of Maricopa County, and the State Loan Commissioners to cause a loss to the state school fund by calling these non-callable bonds. In the *Restatement of the Law of Trusts*, Vol. 1 Section 178, page 456, the following rule is stated:

> "The trustee is under a duty to the beneficiary to defend actions which may result in a loss to the trust estate, unless under all the circumstances it is reasonable not to make such defense.
>
> See also, 2 Scott on Trusts, Section 178, page 940.
>
> In re, Trust Deeds of Smaltz, 17 Atl. (2d) 455, 457.

While it is true that a technical trust is not created by the Enabling Act, still the use of the terms, "trust" and "breach of trust", indicates that congress intended that the lands granted to the state, and the proceeds derived from the sale thereof, should be protected by the rules pertaining to trusts, and unquestionably, the state and every officer of the state, includ-

ing the supreme court of the state, can be prevented from causing a disposal of said lands and the proceeds derived therefrom in any manner not in strict accordance with the provisions of the Enabling Act.

Ervien v. U. S. 251 U. S. 41,
64 L. ed. 128,
40 Sup. Ct. Rep. 75.

(b) The Supreme Court of Arizona has held that legislation attempting to divert the proceeds of lands donated by the Enabling Act for other purposes however beneficent, is a violation of the trusts created by that Act. Said court holds that a legislative attempt to relieve mortgagors who had borrowed the school funds from the payment of interest on their mortgages violates Section 2, Article 10 of the State Constitution, which is the section adopting a portion of the Enabling Act above quoted. The court states the following:

> "The interest and principal must be used for the specific purpose for which institutional lands were granted to the state or to the territory before it became a statte. The legislature would have as much right to appropriate such funds or the interest thereon for road building purposes as it would have to give such fund away".

Rowlands v. State Loan Board,
24 Ariz. 116, 207 Pac. 359.

It is clear that if the bonds held by the State Treasurer are not callable to surrender the same at their par value when a large premium was paid, based on the fact that they had yet a number of years to run and their actual value is greatly in excess of their

par value, is just as plainly a giving away of the trust funds as the attempt to forgive interest to the mortgagors condemned by the State Supreme court in *Rowlands v. State Loan Board*, supra.

(c) The same line of reasoning is followed by other courts in other states. The United States District Court, for the District of Idaho, held under similar provisions in the Idaho constitution, that the trusts created by the Enabling Act of that state prevented mortgages to secure loans of funds obtained from the sale of state school lands from becoming barred by the statute of limitations. The court says the following:

> "As both the Admission Act and the State Constitution grants in trust public school lands, the proceeds from the sale thereof naturally remains as a part of the trust, and that the conditions are inviolable conditions which were accepted by the state. The state cannot violate these conditions nor dissipate such funds by enacting limitation acts providing recovery of the trust funds after a certain period, for it has not the power to accept such sacred and trust funds, and after loaning it out, by its act bar its recovery and the duty to recover it back upon the nonpayment of the loan."
>
> United States v. Fenton, 27 Fed. Sup. 816, 819.

We think it is clear that it is the duty of the federal courts to prevent not only the legislature of the state but the state Supreme Court as well, from violating the trusts created by the Enabling Act.

In *State v. Peterson*, 97 Pac. (2d) 603, 604, the Supreme Court of Iadho held that the title to state school lands held in trust under the Enabling Act would not be lost by adverse possession. The court says:

> "Thus these public school endowment funds are trust funds of the highest and most sacred order, made so by Act of Congress and the Constitution".
>
> State v. Peterson, 97 Pac. (2d) 603, 604.

The Supreme Court of Arizona has in effect said the same thing in *Campbell v. Caldwell*, 20 Ariz. 377, 380; 181 Pac. 181, in which it is declared:

> "The Constitution, Section 1, Article 10, makes the state a trustee of the lands granted to it by the federal government for the several purposes for which such lands are granted."

We respectfully submit that the case must be considered by the federal courts on its merits, and upon such consideration judgment must be entered for plaintiff.

Respectfully submitted,

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cities, and school districts, are largely increased by the depreciated value of warrants and the high rate of interest they bear. The Territory and many of the counties have each year fallen a little behind the preceding year in meeting their expenses, and it is therefore an absolute necessity to afford them relief.

The committee believe that a Territorial bond, with the long time proposed and having the approval of Congress, can be sold at par, bearing a less rate of interest than can be sold in any other way, and thereby secure for the Territory the much-needed relief and the saving of $100,000 annually.

The provisions of the bill for carrying the same into effect have been carefully considered by the committee and are found to be ample, and that, except to legalize the indebtedness, there is no responsibility attached to the United States.

The time within which indebtedness may be funded is placed at December 31, 1890, when the taxes are due and payable. From and after that date there will be cash on hand with which to meet the current expenses of the Territory.

The committee are unanimously of opinion that the Territory of Arizona is entitled to relief, and therefore report back the accompanying bill with amendment, and recommend that it do pass."

III

Exhibit B

CONGRESSIONAL RECORD—HOUSE

(July 20, 1894, page 7754)

FUNDING ACT OF ARIZONA

MR. CULBERSON. Mr. Speaker, I call up the bill (H. R. 6754) to amend section 15 of an act approving, with amendments, the funding act of Arizona, approved June 25, 1890.

The bill was read, as follows:

BE IT ENACTED, etc. That an act entitled "An act approving, with amendments, the funding act of Arizona," approved June 25, 1890, and paragraph 2052 (section 15) of said act, be, and the same is hereby amended by adding thereto as follows:

"Provided further, however, That the present outstanding warrants, certificates, and other evidences of indebtedness issued subsequent to December 31, 1890, for the necessary and current expenses of carrying on the Territorial government only, together with such warrants as may be issued for such purpose for the years ending December 31, 1894, and December 31, 1895, may also be funded and bonds issued for the redemption thereof; and thereafter no warrants, certificates, or other evidences of indebtedness shall be allowed to issue or be legal where the same is in excess of the limit prescribed by the Harrison Act."

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Sec. 2. That all acts or parts of acts in conflict with this act are hereby repealed.

MR. CULBERSON. I yield to the gentleman from Arizona.

MR. SMITH of Arizona. Mr. Speaker, this is simply a bill carrying to a further extent the funding act of Arizona, so as to prevent the payment of 10 per cent on outstanding warrants for the current expenses of the Territory. It is desired to fund them under the funding act until the collection of the taxes, so as to be able to start on a cash basis. This is purely a local matter extending our funding act, and the bill is unanimously reported from the Committee on the Judiciary.

MR. HUNTER. I see that it provides for extending the time up to 1895.

MR. SMITH of Arizona. Yes. That is, until the collection of taxes.

MR. HUNTER. But if the Territory should become a State in the meantime would not that have some effect on the provisions of this bill?

MR. SMITH of Arizona. It would not have any effect, for the debt would be bonded as it arose, and the limitation placed by the Territorial Legislature, which does not meet until February, 1895. The Legislature can provide then for everything that happens thereafter, and this is intended only to fix the time up to the meeting of the Territorial Legislature.

The bill was ordered to be engrossed and read a third time; and being engrossed it, was accordingly read the third time, and passed.

On motion of MR. CULBERSON, a motion to reconsider the vote by which the bill was passed was laid on the table.

Exhibit C

CONGRESSIONAL RECORD—SENATE

(May 23, 1896, pages 5625 and 5626)

MR. PERKINS. I ask unanimous consent to call up the bill (S. 3161) amending and extending the provisions of an act of Congress entitled "An act approving with amendments the funding act of Arizona," approved June 25, 1890, and the act amendatory thereof and supplemental thereto, approved August 3, 1894.

There being no objection, the Senate, as in Committee of the Whole, proceeded to consider the bill.

MR. COCKRELL. When was that bill reported?

MR. WHITE. A very short time ago, I think.

MR. PERKINS. It was reported from the Committee on Territories yesterday.

MR. COCKRELL. The report has not been laid on my table.

MR. PERKINS. The report is printed, and the Secretary will read it for the Senator's information.

MR. COCKRELL. I can understand much better when I have the report myself. Does the report explain the bill?

MR. PERKINS: I so understand. I will say that I introduced the measure more especially at the request of the Delegate from Arizona, and it is to correct some informality. The committee examined it very carefully, and from those who have stated the matter to me I learn it is a very proper measure.

MR. COCKRELL. Let the report be read.

THE VICE-PRESIDENT. The report will be read.

The Secretary read the following report, submitted by Mr. Davis May 22, 1896:

The Committee on Territories, to whom was referred Senate Bill 3161, having considered the same, hereby adopt House Report No. 1931 in support to a bill identical in tenor, and recommend the passage of Senate Bill aforesaid.

(House Report No. 1931, Fifty-fourth Congress, first session.)

The Committee on the Territories, to whom was referred House bill 8885, beg leave to submit the following report:

The act of Congress entitled "An act approving, with amendments, the funding act of Arizona" became a law June 25, 1890, and authorized the fund-

ing of all Territorial, county, municipal, and school-district indebtedness of Arizona which had accrued and would accrue, with the interest thereon, until and including December 31, 1890, into 5 per cent bonds, and under the provisions of the act a loan commission, consisting of the governor, secretary of the Territory, and Territorial auditor, was created to fund indebtedness under the terms of the act.

The purpose of the law was to effect an annual saving in interest and place the Territory upon a cash basis. The floating indebtedness of the territory represented by warrants bore 10 per cent interest, and upon that indebtedness an immediate saving was had of 5 per cent. The average rate of interest on the bonded indebtedness of the Territory was 8 per cent, and the operation of the law effected a saving of 3 per cent upon all indebtedness funded. Only such bonded indebtedness could be funded as had matured or was voluntarily surrendered by the holders thereof.

A supplemental act of Congress was passed and approved August 3, 1894, extending the time for funding outstanding warrants for Territorial expenses only until December 31, 1895. The object of the present bill is to further extend the provisions of the funding act approved June 25, 1890, until January 1, 1897, so as to permit and authorize the funding of such outstanding indebtedness as might have been funded under the original act had the same been surrendered before the act had lapsed.

It is not proposed to fund any indebtdness which

could not have been funded under the original act had said indebtedness been presented in time.

No new indebtedness is proposed to be funded in excess of the limit prescribed by law. In authorizing the funding of the outstanding liabilities the act also validates the indebtedness already funded and authorized to be funded, so as to prevent the possibility of repudiation of bona fide obligations.

The eighteenth legislature of Arizona unanimously memorialized Congress to validate securities about which doubt existed.

Upon investigation the committee believe the legislation beneficial and wise and in the interest of good government, and therefore recommend the passage of the bill.

The bill was reported to the Senate without amendment, ordered to be engrossed for a third reading, read the third time, and passed.

Exhibit D

CONGRESSIONAL RECORD—HOUSE

(June 1, 1896, page 5968)

MR. MURPHY of Arizona. Mr. Speaker, I move to suspend the rules and pass the Senate bill which I send to the desk.

The bill was read, as follows:

BE IT ENACTED, etc., That the provisions of

the acts of Congress approved June 25, 1890, and August 3, 1894, authorizing the funding of certain indebtedness of the Territory of Arizona, are hereby amended and extended so as to authorize the funding of all outstanding obligations of said Territory, and the counties, municipalities, and school districts thereof, as provided in the act of Congress approved June 25, 1890, until January 1, 1897, and all outstanding bonds, warrants, and other evidences of indebtedness of the Territory of Arizona, and the counties, municipalities, and school districts thereof, heretofore authorized by legislative enactments of said Territory bearing a higher rate of interest than is authorized by the aforesaid funding act approved June 25, 1890, and which said bonds, warrants, and other evidences of indebtedness have been sold or exchanged in good faith in compliance with the terms of the acts of the legislature by which they were authorized, shall be funded, with the interest thereon which has accrued and may accrue until funded into the lower interest-bearing bonds as provided by this act.

Sec. 2. That all bonds and other evidences of indebtedness heretofore funded by the loan comission of Arizona under the provisions of the act of Congress approved June 25, 1890, and the act amendatory thereof and supplemental thereto approved August 3, 1894, are hereby declared to be valid and legal for the purposes for which they were issued and funded, and all bonds and other evidences of indebtednesses heretofore issued under the authority of the legislature of said Territory, as hereinbefore authorized to be funded, are hereby confirmed, approved, and validated, and may be funded as in this act pro-

vided until January 1, 1897; Provided, That nothing in this act shall be so construed as to make the Government of the United States liable or responsible for the payment of any of said bonds, warrants, or other evidences of indebtedness by this act approved, confirmed, and made valid, and authorized to be funded.

The SPEAKER pro tempore. Is a second demanded?

MR. HEPBURN. I demand a second.

MR. MURPHY of Arizona. I ask unanimous consent that a second be considered as ordered.

MR. KEM. I object.

Tellers being ordered upon the question of ordering a second, the House divided; and the tellers reported—ayes 80, noes 1.

So a second was ordered.

MR. MURPHY of Arizona. Now, Mr. Speaker, I ask that the report upon this bill be read. It is a unanimous report and explains the object of the bill clearly.

The report (by Mr. Harris) was read, as follows:

The Committee on the Territories, to whom was referred House bill 8885, beg leave to submit the following report:

The act of Congress entitled "An act approving,

with amendments, the funding act of Arizona" became a law June 25, 1890, and authorized the funding of all Territorial, county, municipal, and school district indebtedness of Arizona which had accrued and would accrue, with the interest thereon, until and including December 31, 1890, into 5 per cent bonds, and under the provisions of the act a loan commission, consisting of the governor, secretary of the Territory, and Territorial auditor, was created to fund indebtednesses under the terms of the act.

The purpose of the law was to effect an annual saving in interest and place the Territory upon a cash basis. The floating indebtedness of the Territory represented by warrants bore 10 per cent interest, and upon that indebtedness an immediate saving was had of 5 per cent. The average rate of interest on the bonded indebtedness of the Territory was 8 per cent, and the operation of the law affected a saving of 3 per cent upon all indebtedness funded. Only such bonded indebtedness could be funded as had matured or was voluntarily surrendered by the holders thereof.

A supplemental act of Congress was passed and approved August 3, 1894, extending the time for funding outstanding warrants for Territorial expenses only until December 31, 1895. The object of the present bill is to further extend the provisions of the funding act approved June 25, 1890, until January 1, 1897, so as to permit and authorize the funding of such outstanding indebtedness as might have been funded under the original act had the same been surrendered before the act had lapsed.

It is not proposed to fund any indebtedness which

could not have been funded under the original act had said indebtedness been presented in time.

No new indebtedness is proposed to be funded in excess of the limit prescribed by law. In authorizing the funding of the outstanding liabilities the act also validates the indebtedness already funded and authorized to be funded, so as to prevent the possibility of repudiation of bona fide obligations.

The eighteenth legislature of Arizona unanimously memorialized Congress to validate securities about which doubt existed.

Upon investigation the committee believes the legislation beneficial and wise and in the interest of good government, and therefore recommend the passage of the bill.

MR. MURPHY of Arizona. I reserve the balance of my time, unless some gentleman desires to ask questions.

MR. HOPKINS. Mr. Speaker, I think it is quite important that the gentleman should explain the provisions of this bill somewhat.

Mr. MURPHY of Arizona. I supposed that the report explained it sufficiently, but if the gentleman thinks it does not I will gladly supplement it with a brief explantain. Under the working of the act of Congress approved June 25, 1890, the Territory of Arizona was authorized to fund all its indebtedness of whatever nature into 5 per cent bonds, thereby effecting an average saving of 3 per cent upon its

indebtedness. That law applied to all kinds of indebtedness—school district, Territorial, county, and municipal.

A commission was organized under the act, consisting of the governor, the secretary, and the Territorial auditor, for the purpose of executing the law, but of course the outstanding indebtedness bearing a higher rate of interest could not be compelled to be surrendered or funded unless it had matured, and therefore there still remained a considerable portion which could not be funded. Many obligations were about to mature, and they were funded. A portion of the 8 per cent indebtedness was funded, but some of the higher interest-bearing bonds of counties and municipalities were refused to be surrendered for funding. The expectation was to put the Territory upon a cash basis, but that expectation was disappointed, and the members of the Territorial government came here and asked the last Congress to extend the funding act for a year longer, covering the floating indebtedness and the Territorial expenses only, but not including the outstanding indebtedness of municipalities bearing a higher rate of interest. That act was passed August 3, 1894.

A question was raised here this morning about a cloud being on Territorial bonds, and a bill was passed validating certain bonds of New Mexico. A large amount of the bonds of Arizona might possibly give rise to the same questions if our people desired to repudiate their obligations, but there is no such desire on their part, and the Territorial legislatures, recognizing the danger to the credit of the Territory

if anyone should undertake to litigate these securities, have unanimously memorialized Congress to pass this act to validate both the bonds which have been funded and others outstanding, bearing a higher rate of interest, upon their voluntary surrender by their holders. There is about $200,000 involved altogether. I will aks the Clerk to read the memorial of the legislature, if the gentleman desires.

MR. HOPKINS. That is not necessary.

MR. JOHNSON of North Dakota. I wish to ask the gentleman whether there is anything in the act of 1890 safeguarding these bonds against being sold for less than par?

MR. MURPHY of Arizona. Yes, sir; they can not be so sold.

MR. JOHNSON of North Dakota. I do not see any provision of that kind in the bill.

MR. MURPHY of Arizona. Well, this bill refers to the provisions of the other act, which prohibits the selling of the bonds for less than par.

MR. JOHNSON of North Dakota. What arrangement is there for securing a premium on the bonds, provided the market should warrant it?

MR. MURPHY of Arizona. The Territorial officers constituting the loan commission are required, under the provisions of the act, to advertise for bids.

MR. JOHNSON of North Dakota. What experi-

ence have you had on that subject since the act of 1890?

MR. MURPHY of Arizona. Bonds to the amount of $500,000 were sold at a premium, bringing 102.

MR. JOHNSON of North Dakota. The bonds, as I understand, which were sold under the act of 1894 were gold bonds; that is, the interest was payable in gold.

MR. MURPHY of Arizona. Yes, sir; and the principal in lawful money.

MR. JOHNSON of North Dakota. And the same requirement applies with regard to these bonds?

MR. MURPHY of Arizona. Yes, sir.

MR. McCORMICK. Will this issue of bonds cover the entire indebtedness of the Territory?

MR. MURPHY of Arizona. Yes, sir; the entire indebtedness of the Territory may be funded under this act.

MR. JOHNSON of North Dakota. Will this bill, if it becomes a law, have the effect of validating any bonds which are now questionable?

MR. MURPHY of Arizona. Yes, sir; to a certain degree. None of the bonds have been repudiated by the Territory, but there is a cloud to a certain extent resting upon some of them.

MR. HEPBURN. This indebtedness, or the

larger part of it, was incurred, I believe, while a statute of the United States forbidding the Territory from issuing bonds was in force?

MR. MURPHY of Arizona. Oh, no; only a very small portion of it—about $200,000.

MR. HEPBURN. What is the total amount that has been funded or may be funded under this act—the total amount of indebtedness of the Territory?

MR. MURPHY of Arizona. Probably less than $2,000,000. I funded $1,600,000 while I was governor. The aggregate I have named covers not simply debts of the Territory proper, but indebtedness of cities, counties, townships, and school districts. No one would call the debt of New York City the debt of New York. The amount of indebtednesses I have named includes every kind of obligation of the Territory proper and the indebtedness of municipalities, school districts, etc.; and the funding of this debt will save us on the average 3 per cent interest.

MR. HEPBURN. What portion of the $2,000,000 of indebtedness has been or will be incurred in the refunding of bonds of the prohibited class of which we have been speaking?

MR. HILBORN. The Pima claims?

MR. MURPHY of Arizona. None of the Pima claims; but of obligations similar to those, about $200,000.

MR. HEPBURN. I am willing to yield the floor to any gentleman who wants to speak on this subject. (Cries of "Vote!" "Vote!")

The question was taken; and the motion to suspend the rules and pass the bill was agreed to, two-thirds voting in favor thereof.

Exhibit E

Act 9, page 38, Session Laws of 1897, approved March 8, 1897, authorized the issuance of $100,000.00 of territorial bonds for the erection of the capitol building, such bonds to be payable absolutely in fifty years from their date, the territory to have the right to pay them at any time after twenty years from their date.

Act 47, approved March 19, 1903, page 75, Session Laws of 1903, authorized the issuance of bonds to provide for improvements and publications of the Agricultural Experiment Station of the University and establishing farmers' institutes and short courses. The bonds were made payable within twenty years from the date of their issuance. This act provided for a sinking fund, and further provided that whenever, "after the expiration of ten years from the issuance of any bonds under this act there remains, after the payment of the interest as provided in this section, a surplus of $1,000.00 or more, it shall be the duty of the territorial treasurer to advertise for the retirement of the bonds. Clearly, these bonds were authorized to be optional for the period between ten and twenty years after their date of issuance.

Act 73, approved March 19, 1903, page 127 Session Laws of 1903, authorized the issuance of $100,000.00 of bonds for the purpose of making improvements to the territorial asylum. These bonds were required to be payable fifty years after date. A sinking fund was provided for and Section 8 of said act contained the following provisions:

"Whenever, after the expiration of twenty-five years from the date of issuance of any bond under this act there shall be in the sinking fund for the redemption of the bonds for the territorial asylum for the insane, the sum of $2,500.00 or more, it shall be the duty of the territorial treasurer to advertise," for the retirement of said bonds. Clearly, these bonds were optional during the period between twenty-five years and fifty years after their date of issuance.

In 1905, the legislature authorized Apache County to raise money for the purpose of building a court house, in the amount of $15,000.00, payable thirty years from the date of issuance, providing a sinking fund beginning with the year 1925, which should be sufficient each year after that date to pay $1500.00 upon the principal of said bonds. Chapter 6, page 5, Session Laws of 1905.

Likewise, in the year 1905, the legislature passed an act authorizing Gila County to issue $40,000.00 of bonds for court house and jail, payable in thirty years, with an option on the part of the county to pay any or all of them after ten years after the date of their issuance. Chapter 9, page 12, Sessions Laws of 1905.

Likewise, in 1905, the legislature passed an act authorizing Mohave County to issue $20,000.00 bonds for the purpose of building a court house, said bonds to be payable thirty years from the date of their issuance, and providing for a sinking fund beginning in the year 1925, and that each year thereafter a tax of $2000.00 per year should be levied to retire said bonds. Chapter 57, page 112, Session Laws of 1905.

Likewise, in 1905, the legislature passed an act providing for the issuance of $19,000.00 of bonds for the repair of the territorial bridge across the Gila, at Florence, said bonds to be payable at the end of fifty years and to be optional twenty-five years after their issuance. Chapter 58, page 117, Session Laws of 1905.

Likewise, in 1905, the legislature passed an act for the issuance of $40,000.00 bonds for additional buildings and equipment at the territorial prison, said bonds to be payable fifty years after date and to be redeemable after twenty-five years from the date of 1905.

Likewise in 1905, the legislature passed an act authorizing the county of Mohave to issue bonds for $10,000.00 for the construction and furnishing of a jail, said bonds to be payable in twenty years, with an option on the part of the county to pay any or all of them after ten years from the date of issuance.

Act 61, page 129, Session Laws of 1905.

In 1907, the legislature passed an act authoriz-

ing Gila County to issue $25,000.00 bonds for the completion of the court house and jail, said bonds to be payable in twenty years, with option on the part of the county to pay any or all of them after eight years from the date of their issuance.

Chapter 17, page 16, Session Laws, 1907.

In 1909, the legislature passed an act authorizing Mohave County to issue bonds for building a court house in the amount of $30,000.00, payable thirty years after date, and providing for a sinking fund and that in the year 1929 and each year thereafter until the year 1939, the county should levy and collect a tax sufficient to pay $3,000.00 upon the principal of said bonds, and when the sum of $5,000.00 should be in the redemption of said bonds. Chapter 17, page 34, Session Laws of 1909.

Exhibit F

Title 52

Chapter I

Funding and Refunding

5251. For the purpose of liquidating and providing for the payment of the outstanding and existing indebtedness of the State of Arizona, or of the Territory of Arizona assumed by the State of Arizona, and such future indebtedness as may be or is now authorized by law, the governor of the said state, together with the state auditor and state treasurer,

and their successors in office shall constitute a board of commissioners, to be styled the Loan Commissioners of the State of Arizona, and shall have and exercise the powers and perform the duties hereinafter provided.

Marginal Notations: Loan Commissioners, Ch. 29, Sec. 1, Laws 1912, 1st Sp. Sess.

5252. It shall be and is hereby declared the duty of the said loan commissioners to provide for the payment of the existing state indebtedness due, and to become due, or that is now or may hereafter be authorized by law; and for the purpose of paying, redeeming, and refunding all or any part of the principal and interest of the existing and subsisting state legal indebtedness, and also that which may at any time become due, or is now or may be hereafter authorized by law, the said commissioners shall, from time to time, issue negotiable coupon bonds of this state when the same can be issued at a lower rate of interest than previously paid on state indebtedness and to the profit and benefit of the state.

5253. Said bonds shall be isued as nearly as practicable in denominations of one thousand dollars, but bonds of a lower denomination, of not less than one hundred dollars may be issued when necessary. Said bonds shall bear interest at a rate to be fixed by said loan commissioners but in no case to exceed five per centum per annum, which interest shall be paid in gold coin or its equivalent in lawful money of the United States, on the 15th day of January and

July in each year, at the office of the state treasurer or some bank or trust company in the City of New York at the option of the purchaser of said bonds, the place of payment being mentioned in said bonds. The principal of said bonds shall be made payable in lawful money of the United States within twenty-five years after date of their issue. The state reserves the right to redeem at par any of said bonds in their numerical order at any time after fifteen years after the date thereof. They shall bear the date of their issue, state when, where, and to whom payable; rate of interest, and when and where such interest is payable; shall be signed by said loan commissioners; shall have the seal of the state affixed thereto; shall be countersigned by the state treasurer and bear his official seal, and shall be registered by the state auditor in a book to be kept by him for that purpose, which record shall show amount sold for, or if exchanged, for what exchanged; and the faith and credit of the state is hereby pledged for the payment of said bonds and the interest accruing thereon as herein provided.

Marginal Notations: Issuance of refunding bonds, Sec. 3, id., Am. Ch. 2, Laws 1913, 2nd Sp. Sess.

5254. Coupons for the interest shall be attached to each bond, so that they may be removed without injury to, or mutilation of such bond.

They shall be consecutively numbered and bear the same number of the bond to which they are attached, and shall be signed by the state treasurer.

The said coupons shall cover the interest expressed

in said bond from the date of issue until paid; but in no case shall bonds bear interest, nor shall interest be paid thereon for any time before their delivery to the purchaser, as hereinafter provided.

Marginal Notations: Interest coupons, Sec. 4, id., Ch. 29, Laws 1912, 1st Sp. Sess.

5255. Whenever the said loan commissioners may be authorized by law to issue bonds, or shall have decided to refund or redeem all or any part of the existing indebtedness of this state they shall direct the state treasurer to advertise for a sale of the bonds to be issued for that purpose, by causing a notice of such sale to be published once a week for the period of one month in three newspapers published in the state, no two of which shall be published in the same county, and they may further direct the state treasurer, if in their opinion such action is desirable, to advertise as hereinbefore mentioned by at least one insertion in a publication published in the City of New York, in the State of New York, and in one in the City of San Francisco, in the State of California; such notice shall specify the amount of bonds to be sold, the place, day, and hour of sale, and that bids will be received by said treasurer for the purchase of said bonds within one month from the expiration of said publication; and at the place and time named in said notice the said treasurer and loan commissioners shall open all bids received by him and shall award the purchase of said bonds, or any part thereof, to the bidder or bidders making the best offer therefor; provided, that said loan commissioners shall have the right to reject any and all bids; and provided, further, that they may refuse to make any award unless sufficient security

shall be furnished by the bidder or bidders for the compliance with the terms of their bids.

Marginal Notation: Sale of bonds, Sec. 5, id.

5256. When the sale of said bonds shall be awarded by the loan commissioners, they shall provide and procure the necessary bonds, and any expense incurred by them therefor, for the publication of said notices, cost of remitting funds for the payment of interest or money on said bonds, and all necessary incidental expenses shall be paid out of the general fund of the state, upon the order of the state auditor, countersigned by the governor; and a sum of money sufficient to cover said costs and expenses is hereby appropriated out of said fund.

They shall, from time to time after signing said bonds, deliver them to the state Treasurer, taking his receipt therefor, and charge him therewith.

Marignal Notation: Cost of sale, Sec. 6, id.

5257. The state treasurer shall sell said bonds for cash, or exchange them for any of the indebtedness for the redemption of which they were so issued, but in no case shall said bonds be sold or exchanged for less than their face or par value and the accrued interest at the time of disposal, nor must any indebtedness be redeemed at more than its face value and any interest that may be due thereon.

The treasurer shall endorse by writing or stamping in ink on the face of the paper evidencing the indebtedness received by him in exchange for said bonds,

the time when and the amount for which exchanged.

Marginal Notation: Sale or exchange of bonds, Sec. 7, id.

5258. Moneys received by the treasurer shall be applied by him to the redemption of the indebtedness for the redemption of which bonds were issued, and the treasurer shall give notice, as is provided by law in case of payment and redemption of state warrants, of his readiness to redeem such indebtedness and thereafter interest on all such indebtedness due and outstanding shall cease.

Before any such indebtedness shall be paid, the state auditor shall endorse on each certificate the amount due thereon, and shall write across the face of each the date of its surrender and the name of the person surrendering, and shall keep proper record thereof.

Marginal Notations: Application of proceeds, Sec. 8, id.

5259. There shall be levied annually upon the taxable property in this state, and in addition to the levy for other authorized taxes, a sufficient sum to pay the interest on all bonds issued and disposed of hereunder, to be placed in the state treasury, in the fund to be know as the "Interest Fund." And each year after such bonds shall have been issued such additional amount shall be levied annually as will pay four per cent of the total amount issued until all the bonds issued hereunder are paid and discharged.

The state board of equalization, or, on their failure,

the state auditor, shall determine the rate of tax to be levied in the different counties in the state to carry out the provisions of this section, and shall certify the same to the board of supervisors, in each county and to the municipal or school authorities; and the said board of supervisors, or authorities, are hereby directed and required to enter such rate on their assessment rolls in the same manner and with the same effect as is provided by law in relation to other state, county, municipal, and school taxes. Every tax levied under the provisions or authority of this section shall be a lien against the property assessed.

All moneys derived from taxes authorized by this section shall be paid into the state treasury, and shall be applied:

First. To the payment of the interest on the bonds issued hereunder.

Second. To the payment of the principal of such bonds;

Provided, that all moneys remaining in the interest fund after the payment of the interest and all moneys remaining in the "redemption fund" after all of said bonds shall have been paid and discharged, shall be transferred by the state treasurer to the state "general fund".

Marginal Notations: Tax levy, Sec. 9, id.

5260. Whenever, after the expiration of the fifteen years from the date of issuance of any bonds under this chapter, there remains after the payment

of the interest, as provided in the preceding section, a surplus of ten thousand dollars or more, it shall be the duty of the state treasurer to advertise, as in the manner of advertising by the loan commissioners for bids for sale of bonds, which advertisement shall state the amount of moneys in the said redemption fund, and the number of bonds, numbering them in the order of their issuance, commencing at the lowest number then outstanding, which said fund is set apart to pay and discharge; and if such bonds so numbered in such advertisements shall not be presented for payment and cancellation at the expiration of such publication, then such fund shall remain in the treasury to discharge such bonds whenever presented, but they shall draw no interest after the expiration of such publication. Before any such bonds shall be paid they shall be presented to the state auditor, who shall endorse on each bond the amount due thereon, and shall write across the face of each bond the date of its surrender and the name of the person surrendering. The state auditor shall keep a record of all bonds issued and disposed of by the state treasurer, showing their number, rate of interest, date and amount of sale, when, where, and to whom, payable, and if exchanged, for what, and when presented for redemption the date, amount due thereon, and person surrendering. The boards of supervisors of the counties, the municipal and school authorities, are hereby authorized and directed to report to the loan commissioners of the state their bonded and outstanding indebtedness, and said loan commissioners may, on written demand, require an official report from the board of supervisors of counties, the municipal or school authorities, of their bonded and outstanding indebtedness, and said loan

commissioners shall provide for the redeeming or refunding of the county, municipal and school district indebtedness, upon the official demand of said authorities, in the same manner as other state indebtedness, and they shall issue bonds for any indebtedness now allowed, or that may be hereafter allowed by law, to said county, municipality, or school district upon official demand by said authorities. The county, municipality, or school district shall pay into the state treasury, in addition to all other taxes authorized by law, such amounts as may be directed by the state board of equalization, or on their failure by the state auditor, to be levied for the payment of the principal of such bonds issued in redemption, or refunding, or of other bonds issued to such county, municipality, or school district, as herein provided, in the same manner as is herein provided for the payment of the principal and interest of state indebtedness, and, in addition, the interest paid by the state on such bonds.

Marginal Notation: Redemption of bonds, Sec, 10, id.

5261. When the treasurer pays or redeems any indebtedness he shall endorse, by writing or stamping in ink, on the face of the paper evidencing such indebtedness so paid or redeemed, the words "redeemed and cancelled" with the date of cancellation. He shall keep a full and particular account and record of all his proceedings of the bonds redeemed and surrendered, and he shall transmit to the governor an abstract of all his proceedings with his annual report, to be by the governor laid before the legislature at its

meeting. All books and papers pertaining to the issuance and payment of bonds and interest thereon shall at all times be open to the inspection of the party interested, or to the governor, or committee of either branch of the legislature, or a joint committee of both.

Marginal Notation: Cancellation of redeemed bonds, Sec. 11, id.

5262. It shall be the duty of the state treasurer to pay the interest on said bonds when the same falls due out of the said interest fund, if sufficient; and if said fund be not sufficient, then to pay the deficiency out of the general fund; provided, that the state auditor shall first draw his warrant on the state treasurer, payable to the order of said treasurer, for the amount of such deficiency, out of the general fund.

Marginal Notation: Payment of interest, Sec. 12, id.

5263. It shall be the duty of said loan commissioners to make a full report of all their proceedings to the governor on or before the first day of January of each year, and said reports shall be transmitted by the governor to the State legislature.

Marginal Notation: Report of loan commissioners, Sec. 13, id.

5264. No bond issued under the provisions of this chapter shall be taxed within this state.

Marginal Notation: Bonds not taxable, Sec. 14, id.

5265. Whenever the owner of any coupon bond

issued pursuant to the provisions of this chapter shall present such bond to the state auditor with a request for the conversion of such bond into a registered bond, the state auditor shall cut off and cancel the coupons of any such coupon bond so presented and shall stamp, print or write upon such bond so presented, either upon the back or the face thereof, as may be convenient, a statement to the effect that the said bond is registered in the name of the owner and that, thereafter, the interest and principal of said bond are payable to the registered owner. Thereafter and from time to time, any such bond may be transferred by such registered owner in person or by attorney duly authorized, on presentation of such bond to the state auditor and the bond again registered as before, a similar statement being stamped, printed or written upon any such bond may be substantially in the following form:

(Date: giving month, year and day.)

This bond is registered pursuant to the statutes in such case made and provided in the name of.....

....., and the interest and principal thereof are hereafter payable to such owner.

.....

State Auditor.

If any bond shall have been registered as aforesaid, the principal and interest of such bond shall be payable to the registered owner. The state auditor shall enter in the register of said bonds kept by him pursuant to the provisions of this chapter, or in a sep-

and in whose name respectively, so that said register or book shall at all times show what bonds are registered and the name of the registered owner thereof.

Marginal Notation: Registration of bonds, Ch. 50, Laws 1913, 2nd Sp. Sess.

Exhibit G

(Chap. 614, 51st Cong. 1st Sess., June 25, 1890.) BE IT ENACTED, etc., That the act of the Revised Statutes of Arizona of eighteen hundred and eighty-seven, known as "Title XXXI—Funding," be and is hereby, amended so as to read as follows, and that as amended the same is hereby approved and confirmed, subject to future territorial legislation:

Marginal Notation: Arizona funding act amended and approved.

TITLE XXXI—FUNDING AND LOAN

Chapter One

"Territorial, County, Municipal, and School District Indebtedness.

"Par. 2039. (Sec. 1). For the purpose of liquidating and providing for the payment of the outstanding and existing indebtedness of the territory of Arizona and such future indebtedness as may be or is now authorized by law, the governor of the said territory together with the territorial auditor and territorial secretary, and their successors in office, shall con-

stitute a board of commissioners, to be styled the loan commissioners of the Territory of Arizona, and shall have and exercise the powers and perform the duties hereinafter provided.

Marginal Notation: Board of loan commissioners constituted.

"Par. 2040. (Sec. 2.) It shall be, and is hereby, declared the duty of the loan commissioners to provide for the payment of the existing territorial indebtedness due, and to become due, or that is now, or may be hereafter, authorized by law and for the purpose of paying, redeeming, and refunding all or any part of the principal and interest, or either of the existing and subsisiting territorial legal indebtedness, and also that which may at any time become due, or is now or may be hereafter authorized by law, the said commissioners shall, from time to time, issue negotiable coupon bonds of this territory when the same can be done at a lower rate of interest and to the profit and benefit of the territory.

Marginal Notations: Duty of loan commissioners issue of negotiable coupon bonds.

"Par. 2041. (Sec. 3.) Said bonds shall be issued as near as practicable in denominations of one thousand dollars, but bonds of a lower denomination, not less than two hundred and fifty dollars, may be issued when necessary. Said bonds shall bear interest at a rate to be fixed by said loan commissioners, but in no case to exceed five per centum per annum, which interest shall be paid in gold coin, or its equivalent in

lawful money of the United States, on the fifteenth day of January in each year, at the office of the territorial treasurer, or at such bank in the city of New York, in the state of New York, or in the city of San Francisco, in the State of California, or such place as may be designated by said loan commissioners, at the option of the purchaser of said bonds, the place of payment being mentioned in said bonds. The principal of said bonds shall be made payable in lawful money of the United States fifty years after the date of their issue. Said territory reserves the right to redeem at par any of said bonds, in their numerical order, at any time after twenty years after the date thereof.

Marginal Notations: Denominations of bonds. Interest. Maximum. Where payable, etc. Payment of principal. Reserved rights of redemption.

"They shall bear the date of their issue, state when, where, and to whom payable, rate of interest, and when and where payable, and shall be signed by said loan commissioners, and shall have the seal of the territory affixed thereto, and countersigned by the territorial treasurer, and bear his official seal, and shall be registered by the territorial auditor in a book to be kept by him for the purpose, which shall state amount sold for, or, if exchanged, for what; and the faith and credit of the territory is hereby pledged for the payment of said bonds and the interest accruing thereon, as herein provided.

Marginal Notations: Form of bonds. Signed, etc. Sealed. Registered. Pledge of payment.

"Par. 2042. (Sec. 4.) Coupons for the interest shall be attached to each bond, so that they may be removed without inury to or mutilation of bond.

Marginal Notation: Interest Coupons.

They shall be consecutively numbered and bear the same number of the bond to which they are attached, and shall be signed by the territorial treasurer.

Marginal Notation: Consecutive number, etc.

"The said coupons shall cover the interest expressed in said bond from the date of issue until paid; but in no case shall bonds bear interest, nor shall any interest be paid thereon for any time before their delivery to the purchaser, as hereinafter provided.

Marginal Notation: Interest. Limitation.

"Par. 2043. (Sec. 5.) Whenever the said loan commissioners may be authorized by law to issue bonds, or shall have decided to refund or redeem all or any part of the existing indebtedness of this territory, they shall direct the territorial treasurer to advertise for a sale of the bonds to be issued for that purpose, by causing a notice of such sale to be published for the period of one month in some daily newspaper published at the capital of the territory, and at least one insertion in a newspaper published in the city of New York, in the state of New York, and in the City of San Francisco, in the state of California; such notice shall specify the amount of bonds to be sold, the place, day, and hour of sale, and that bids will be received by said treasurer for the purchase of said bonds within one month from the expiration of said

publication; and at the place and time named in said notice, the said treasurer and loan commissioners shall open all bids received by him and shall award the purchase of said bonds, or any part thereof to the bidder or bidders therefor bidding the lowest rate of interest: Provided, That said loan commissioners shall have the right to reject any and all bids: And provided further, That they may refuse to make any award unless sufficient security shall be furnished by the bidder or bidders for the compliance with the terms if their bids.

Marginal Notations: Issue and redemption, etc., of bonds. Advertisement of sale. Bids. Award to lowest bidder. Provisos. Rejection of bids. Security.

"Par. 2044. (Sec. 6.) When the sale of said bonds shall be awarded by the loan commissioners, they shall provide and procure the necessary bonds as in this act provided, and any expense incurred by them therefor, for the publication of said notices, costs of remitting funds for the payment of interest or money on said bonds, and all other necessary incidental expenses under the provisions of this act, shall be paid out of the general fund of said territory, upon the order of the territorial auditor, countersigned by the governor; and a sum of money sufficient to cover said costs and expenses is hereby appropriated out of said fund.

Marginal Notations: Loan commissioners to procure bids. Payment of expenses, etc. Appropriation.

"They shall, from time to time after signing said bonds, deliver them to the territorial treasurer, tak-

ing his receipt therefor, and charge him therewith. The said treasurer shall give to the Territory of Arizona an additional official bond, with two or more sureties, in a sum equal to the amount of bonds delivered to him by the said loan commissioners, which bond shall be approved by the governor and deposited and filed with the secretary of the territory and recorded by him in a book to be kept for that purpose. And the said treasurer shall stand charged upon his official bond for the faithful performance of the duties required of him under this act.

Marginal Notation: Delivery of bonds. Additional bond of treasurer.

"Par. 2045. (Sec. 7.) The territorial treasurer shall sell said bonds for cash, or exchange them for any of the indebtedness for the redemption of which they were so issued, but in no case shall said bonds be sold or exchanged for less than their face or par value and the accrued interest at the time of disposal, nor must any indebtedness be redeemed at more than its face value and any interest that may be due thereon.

Marginal Notations: Sale or exchange of bonds. Limitations.

"That said treasurer shall endorse by writing or stamping in ink on the face of the paper evidencing the indebtedness received by him in exchange for said bonds, the time when and the amount for which exchanged.

Marginal Notation: Indorsement by treasurer.

"Par. 2046. (Sec. 8.) Moneys received by said

treasurer shall be applied by him to the redemption of the indebtedness for the redemption of which bonds were issued, and the treasurer shall give notice, as is provided by law in case of payment and redemption of territorial warrants, of his readiness to redeem such indebtedness, and thereafter interest on all such indebtedness due and outstanding shall cease.

Marginal Notations Application of moneys received. Notice of redemption. Cessation of interest.

Before any such indebtedness shall be paid the territorial auditor shall indorse on each certificate the amount due thereon, and shall write across the face of each the date of its surrender and the name of the person surrendering, and shall keep proper record thereof.

Marginal Notation: Indorsement by auditor. Record.

"Par. 2047. (Sec. 9.) There shall be levied annually upon the taxable property in this territory, and in addition to the levy for other authorized taxes, a sufficient sum to pay the interest on all bonds issued and disposed of in pursuance of the provisions of this act, to be placed in the territorial treasury, in the fund to be known as the 'Interest Fund'. And fifty years after such bonds shall have been issued such additional amount shall be levied annually as will pay ten per cent of the total amount issued until all bonds issued under the provisions of this act are paid and discharged. Nothing herein contained shall be construed to prevent the legislature of Ari-

zona from creating a sinking fund during the life of said bonds for their redemption at maturity.

Marginal Notations: Annual interest tax levy. "Interest fund." Additional ten per cent tax levy. Discharge of bonds. Sinking fund.

"The territorial board of equalization, or, on their failure, the territorial auditor, shall determine the rate of tax to be levied in the different counties in the territory to carry out the provisions of this act, and shall certify the same to the 'board of supervisors' in each county and to the municipal or school authorities; and the said board of supervisors, or authorities are hereby directed and required to enter such rate on their assessment rolls in the same manner and with the same effect as is provided by law in relation to other territorial, county, municipal and school taxes. Every tax levied under the provisions of authority of this act is hereby made a lien against the property assessed, which lien shall attach on the first Monday in March in each year, and shall not be satisfied or removed until such tax has been paid.

Marginal Notations: Determination of taxable rate. Certification and entry of taxable rate on assessment rolls. Tax becomes a lien on property.

"All moneys derived from taxes authorized by provisions of this act shall be paid into the territorial treasury, and shall be applied:

Marginal Notations: Tax moneys to go into treasury.

"First. To the payment of the interest on the bonds issued hereunder.

Marginal Notation: Application of payments.

"Second. To the payment of the principal of such bonds: Provided, That all moneys remaining in the interest fund after the payment of the interest and all moneys remaining in the 'redemption fund' after all said bonds shall have been paid and discharged, shall be transferred by the territorial treasurer to the territorial 'general fund.'

Marginal Notation: Proviso. Transfer of remaining moneys to "general fund."

"Par. 2048. (Sec. 10.) Whenever, after the expiration of the fifty years from the date of issuance of any bonds under this act, there remains after the payment of the interest, as provided in the preceding section, a surplus of ten thousand dollars or more, it shall be the duty of the territorial treasurer to advertise, as in the manner of advertising by the loan commissioners for bids, for sale of bonds, which advertisement shall state the amount of money in the said redemption fund, and the number of bonds, numbering them in the order of their issuance, commencing at the lowest number then outstanding, which such fund is set apart to pay and discharge; and if such bonds so numbered in such advertisements shall not be presented for payment and cancellation at the expiration of such publication, then such fund shall remain in the treasury to discharge such bonds whenever presented, but they shall draw no interest after the ex-

piration of such publication. Before any such bonds shall be paid they shall be presented to the territorial auditor, who shall indorse on each bond the amount due thereon, and shall write across the face of each bond the date of its surrender and the name of the person surrendering. The territorial auditor shall keep a record of all bonds issued and disposed of by the territorial treasurer, showing their number, rate of interest, date, and amount of sale, when, where, and to whom payable, and if exchanged, for what, and when presented for the redemption, the date, amount due thereon, and person surrendering.

Marginal Notations: Redemption surplusage. Treasurer to advertise for presentation of certain bonds for payment, etc. Cessation of interest after publication. Indorsement by auditor before payment. Auditor's bond record.

"The boards of supervisors of the counties, the municipal and school authorities, are hereby authorized and directed to report to the loan commissioners of the territory their bonded and outstanding indebtedness, and said loan commissioners may, on written demand, require an official report from the board of supervisors of counties, the municipal or school authorities, of their bonded and outstanding indebtedness, and said loan commissioners shall provide for the redeeming or refunding of the county, municipal, and school district indebtedness, upon the official demand of said authorities, in the same manner as other territorial indebtedness, and they shall issue bonds for any indebtedness now allowed, or that may be hereafter allowed by law, to said county, municipality, or

school district, upon official demand by said authorities; the county, municipality, or school district to pay into the territorial treasury, in addition to all other taxes authorized by law, such amounts as may be directed by the territorial board of equalization, or on their failure by the territorial auditor to be levied for the payment of the principal of the bonds issued in redemption, refunding, or other bonds issued to such county, municipality, or school district when the same shall become due, and, in addition, a rate of interest paid by the territory on such bonds.

Marginal Notations: County, municipal, and school district indebtedness. Report to loan commissioners. Redemption or refunding of same, on demand, into territorial bonds. Additional principal and interest bond-tax levies.

"Par. 2049. (Sec. 11.) When the treasurer pays or redeems any indebtedness he shall indorse, by writing or stamping in ink, on the face of the paper evidencing such indebtedness so paid or redeemed, the words 'redeemed and cancelled' with the date of cancellation. He shall keep a full and particular account and record of all his proceedings under the act and of the bonds redeemed and surrendered, and he shall transmit to the governor an abstract of all his proceedings under this act with his annual report, to be by the governor laid before the legislature at its meeting. All books and papers pertaining to the matter provided in this act shall at all times be open to the inspection of the party interested, or to the governor, or a committee of either branch of the legislature, or a joint committee of both.

Marginal Notations: Cancellation upon payment of certificate, etc., by treasurer. Treasurer's bond record. Treasurer's annual report. Inspection of bond record, etc.

"Par. 2050. (Sec. 12.) It shall be the duty of the territorial treasurer to pay the interest on said bonds when the same falls due out of the said interest fund, if sufficient; and if said fund be not sufficient, then to pay the deficiency out of the general fund: Provided, That the territorial auditor shall first draw his warrant on the territorial treasurer, payable to the order of said treasurer, for the amount of such deficiency, out of the general fund.

*Marginal Notations*s Payment of bond interest. Proviso. Deficiency.

"Par. 2051. (Sec. 13.) It shall be the duty of said loan commissioners to make a full report of all their proceedings had under the provisions of this act to the governor on or before the first day of January of each year, and said report shall be transmitted by the governor to the territorial legislative assembly.

*Marginal Notation*s Loan commissioner's annual report.

"Par. 2052. (Sec. 14.) No bond issued under the provisions of this act shall be taxed within this territory."

Marginal Notation: Exemption from taxation.

Sec. 15. That nothing in this act shall be construed to authorize any future increase of any indebtedness

in excess of the limit prescribed by the "Harrison Act:" Provided, however, That the present existing and outstanding indebtedness, together with such warrants as may be issued for the necessary and current expenses of carrying on territorial, county, municipal, and school government for the year ending December thirty-first, eighteen hundred and ninety, may also be funded and bonds issued for the redemption thereof; and thereafter no warrants, certificates, or other evidences of indebtedness shall be allowed to issue or be legal where the same is in excess of the limit prescribed by the Harrison Act."

Marginal Notations: Maximum limit of indebtedness. Proviso. Exceptions. Limitation thereafter.

That all acts or parts of acts in conflict with this act are hereby repealed.

Marginal Notation: Repeal.

Exhibit H

(Chap. 200, 53d Cong. 2d Sess., August 3, 1894.)
BE IT ENACTED, etc., That an act entitled "An act approving, with amendments, the funding act of Arizona," approved June twenty-fifth, eighteen hundred and ninety, and paragraph twenty hundred and fifty-two (section fifteen) of said act, be, and the same is hereby, amended by adding thereto as follows:

"PROVIDED further, however, That the present outstanding warrants, certificates, and other evidences of indebtedness issued subsequent to December thirty first, eighteen hundred and ninety, for the nec-

essary and current expenses of carrying on the territorial government only, together with such warrants as may be issued for such purpose for the years ending December thirty-first, eighteen hundre and ninety-four, and December thirty-first, eighteen hundred and ninety-five, may also be funded and bonds issued for the redemption thereof; and thereafter no warrants, certificates or other evidences of indebtedness shall be allowed to issue or be legal where the same is in excess of the limit prescribed by the 'Harrison Act'."

Marginal Notation: Funding of debts for necessary expenses.

Sec. 2. That all acts or parts of acts in conflict with this act are hereby repealed.

Marginal Notation: Limitation.

Exhibit I

> "An act amending and extending the provisions of an act of congress entitled 'An act approving with amendments the funding act of Arizona,' approved June twenty-fifth, eighteen hundred and ninety, and the act amendatory thereof and supplementary thereto, approved August third, eighteen hundred and ninety-four.

"Be it enacted by the senate and house of representatives of the United States of America in congress assembled, that the provisions of the act of congress approved June twenty-fifth, eighteen hundred and ninety, and August third, eighteen hundred and ninety-four, authorizing the funding of certain

indebtedness of the territory of Arizona, are hereby amended and extended so as to authorize the funding of all outstanding obligations of said territory, and the counties, municipalities, and school districts thereof, as provided in the act of congress approved June twenty-fifth, eighteen hundred and ninety, until January first, eighteen hundred and ninety-seven, and all outstanding bonds, warrants, and other evidences of indebtedness of the territory of Arizona, and the counties, municipalities, and school districts thereof, heretofore authorized by legislative enactments of said territory bearing a higher rate of interest than is authorized by the aforesaid funding act approved June twenty-fifth, eighteen hundred and ninety, and which said bonds, warrants, and other evidences of indebtedness have been sold or exchanged in good faith in compliance with the terms of the act of the legislature by which they were authorized, shall be funded, with the interest thereon which has accrued and may accrue until funded into the lower interest bearing bonds as provided by this act.

"Sec. 2. That all bonds and other evidences of indebtedness heretofore funded by the loan commissioners of Arizona under the provisions of the act of congress approved June twenty-fifth, eighteen hundred and ninety, and the act amendatory thereof and supplemental thereto, approved August third, eighteen hundred and ninety-four, are hereby declared to be valid and legal for the purposes for which they were issued and funded; and all bonds and other evidences of indebtedness heretofore issued under the authority of the legisalture of said territory, as hereinbefore authorized to be funded, are hereby confirmed, ap-

proved, and validated, and may be funded as in this act provided until January first, eighteen hundred and ninety-seven: provided, that nothing in this act shall be so construed as to make the government of the United States liable or responsible for the payment of any of said bonds, warrants, or other evidences of indebtedness by this act approved, confirmed, and made valid, and authorized to be funded.

"Approved June 6th, 1896." (29 Stat. 262.)

Exhibit J

CHAPTER 54.
(House Bill No. 65)

AN ACT

Ratifying, Approving and Validating the Highway Construction and Improvement Bonds of Maricopa County, in the Sum of Four Million ($4,000,000.00) Dollars, and the Sale Thereof, Which Bonds Were Authorized to be Issued and Sold by the Board of Supervisors of said County, at an Election by the Property Tax Payers of Said County Held May 17th, 1919, With an Emergency Clause.

WHEREAS, at an election by the property tax payers of Maricopa County, Arizona, held May 17th, 1919, under the provisions of an Act of the Legislature of Arizona entitled, "an Act providing for the creation of County Highway Commissions and prescribing the powers and duties of such commission," approved March 8, 1917, and Acts amendatory thereof and supplemental thereto, the Board of Supervisors of said

county were authorized and empowered to issue and sell the bonds of said county in the sum of Four Million ($4,000,000.00) Dollars, for the purpose of providing funds for the construction and improvement of certain portions of the public highways of said county; and

WHEREAS, pursuant thereto, the Board of Supervisors of Maricopa County, Arizona, did on the 9th day of July, 1919, enter into a contract of sale of said bonds with the following named persons, partnerships and corporations, to-wit:

Bolger, Mosser & Willaman, by T. J. Grace, Agent,

Elston and Company, by B. K. Blanchet, Agent,

C. W. McNear and Company, by B. K. Blanchet, Agent,

Whitaker and Company, by B. K. Blanchet, Agent,

Mississippi Valley Trust Company, by B. K. Blanchet, Agent,

Sidney Spitzer and Company, by B. K. Blanchet, Agent,

Stacy and Braun, by B. K. Blanchet, Agent,

Terry, Briggs and Company, by B. K. Blanchet, Agent,

Prudden and Company, by B. K. Blanchet, Agent,

A. T. Bell and Company, by B. K. Blanchet, Agent,

Bosworth, Chanute and Company, by B. K. Blanchet, Agent,

Graves, Blanchet and Thornburgh, by B. K.

Blanchet, Agent, (hereinafter designated as Graves, Blanchet and Thornburgh and associates) by virtue of which contract, the said Board of Supervisors did thereafter deposit said bonds with the Central Trust Company of Chicago, Illinois, to be delivered by it to the said Graves, Blanchet and Thornburgh and associates, upon the payment thereof by them, according to the terms of said contract; and

WHEREAS, the said Graves, Blanchet and Thornburgh and associates have, under the terms of said contract, taken a proportionate part of said bonds and have paid therefor One Million ($1,000,000.00) Dollars pursuant to the provisions of said contract of sale, which said sum of One Million ($1,000,000.00) Dollars is now being expended by the Maricopa County Highway Commission in the construction of such public highways; and

WHEREAS, the validity of said bonds and the contract of sale thereof by the board of supervisors of Maricopa County, Arizona, has been and is now questioned and disputed by reason of certain alleged irregularities in the issuance and sale thereof as aforesaid, and litigation in respect thereto is now pending in the courts of the State of Illinois;

NOW, THEREFORE, BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ARIZONA:

Section 1. That the bonds of the County of Maricopa in the sum of Four Million ($4,000,000.00 Dollars, authorized by the election by the property tax payers of said county held May 17th, 1919, for the

purpose of providing funds for the construction and improvement of certain portions of the public highways of Maricopa County, and the contract for the sale of such bonds entered into by the Board of Supervisors of said Maricopa County with Graves, Blanchet and Thornburgh and associates on the 9th day of July, 1919, are hereby ratified, approved and declared valid.

Section 2. All acts and parts of acts in conflict with the provisions of this act, are hereby repealed.

Section 3. Whereas, it is necessary for the preservation of the public peace and safety, and to prevent a great financial loss to Maricopa County through delay in the construction and improvement of its public highways, an emergency is hereby declared to exist, and this act shall be in full force and effect from and after its passage and approval by the Governor, and this act is hereby exempted from the operation of the REFERENDUM PROVISIONS of the State Constitution.

Approved March 7th, 1921.

L

EXHIBIT K.

Chapter 86.

(Senate Bill No. 160.)

AN ACT

Ratifying, Approving and Validating the Highway Construction and Improvement Bonds of Maricopa County, in the Sum of Four Million Five Hundred Thousand ($4,500,000.00) Dollars, Authorized to be Issued and Sold by the Board of Supervisors of Said County at an Election by the Property Tax Payers of Said County Held December 31st, 1920.

WHEREAS, at an election by the property tax payers of Maricopa County, Arizona, held December 31st, 1920, the Board of Supervisors of said County were authorized and empowered to issue and sell the bonds of said county to the amount of Four Million Five Hundred Thousand ($4,500,000.00) Dollars, for the purpose of providing funds for the construction and improvement of certain public highways of said county; and

WHEREAS, the right and power of the Board of Supervisors of said county to issue and sell bonds, and the validity of said bonds when so issued and sold by the Board of Supervisors of said county has been and is now questioned and disputed:

NOW, THEREFORE, BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ARIZONA:

Section 1. That the election by the property tax

payers of Maricopa County, Arizona, held December 31st, 1920, by and through which the Board of Supervisors of Maricopa County were authorized and empowered to issue and sell the bonds of said county to the amount of Four Million Five Hundred Thousand ($4,500,000.00) Dollars, for the purpose of providing funds for the construction and improvement of certain of the public highways of said county, was a valid election and conferred upon the Board of Supervisors of said county the power and authority to issue and sell said bonds, and that said bonds when issued and sold by said Board of Supervisors are hereby declared to be free from any defect or invalidity by reason of any act or omission of said Board of Supervisors, in calling and holding said election or preparatory thereto.

Approved March 14th, 1921.

Exhibit L

Chapter 2 *Title* 52 *Revised Statute of* 1913 *with title as shown by original act filed in office of Secretary of State of Arizona.*

AN ACT

ENABLING COUNTIES, SCHOOL DISTRICTS, CITIES, TOWNS, AND OTHER MUNICIPAL CORPORATIONS TO BECOME INDEBTED IN AN AMOUNT EXCEEDING FOUR PER CENTUM OF THE TAXABLE PROPERTY THEREIN; TO PROVIDE FOR ELECTIONS THEREFOR; TO PERMIT COUNTIES, SCHOOL DISTRICTS, CITIES, TOWNS, AND OTHER MUNICIPAL CORPORATIONS TO ISSUE BONDS FOR SUCH INDEBTEDNESS, AND TO PROVIDE FORR THE MANNER OF THE EXPENDITURE OF THE PROCEEDS OF SUCH BONDS, THE PAYMENT OF INTEREST THEREON, AND THE REDEMPTION THEREOF; TO PROVIDE FOR THE CREATION OF INDEBTEDNESS BY INCORPORATED CITIES AND TOWNS FOR SUPPLYING WATER, ARTIFICIAL LIGHT, AND SEWERS WHEN THE WORKS FOR SUCH WATER, ARTIFICIAL LIGHT AND SEWERS WHICH ARE OR SHALL BE OWNED OR CONTROLLED BY THE MUNICIPALITY AND FOR THE REPEAL OF ALL ACTS OR PARTS OF ACTS IN CONFLICT HEREWITH.

Be It Enacted by the Legislature of the State of Arizona:

Title 12

Bond Issue by Counties, Cities, Towns and School Districts for the Purpose of Making Public Improvements.

Sec. 1; Act 29, Page 61, Laws 1912.

Sec. 1. Whenever it is attempted to increase the aggregate amount of the indebtedness of any county, school district, city, town, or other municipal corporation, so as to exceed four per centum of the value of the taxable property in such county, school district, city, town, or other municipal corporation, such value of taxable property therein to be ascertained by the last assessment for state and county purposes previous to such proposed incurring of such indebtednes, such county, school district, city, town, or other municipal corporation may become indebted in an amount exceeding four per centum of the value of such taxable property in the manner and by compliance with the provision of this title.

Sec. 2 id.

Sec. 2. Any county, school district, city, town, or other municipal corporation, acting through its (166) board of supervisors, board of school trustees, city or town council, or the governing body of any other municipal corporation, may, of its own volition, and must upon petition signed by fifteen per centum of the property tax-payers, who shall in all other respects be qualified electors, in said county, school district, city, town, or other municipal corporation, order an election by the property tax-payers who in all other respects

shall be qualified electors, in such county, school district, city, town, or other municipal corporation, for the purpose of determining whether such indebtedness shall be authorized; provided that the order for the election in any school district shall be made by the board of supervisors in the county where such election shall be held, either upon such petition, or upon request of the board of school trustees.

Sec. 3, id.

Sec. 3. At any election so held, if a majority of the property tax-payers, who must also, in all respects, be qualified electors, therein voting at said eelction, in such county, school district, city, town, or other municipal corporation, shall vote in favor of the creation of an indebtedness in an amount exceeding four per centum of the value of the taxable property in such county, school district, city, town, or other municipal corporation, such value to be ascertained as provided in the first section of this title, such county, school district, city, town, or other municipal corporation shall be permitted to become indebted in an amount exceeding four per centum of the value of taxable property therein; provided, that in incorporated cities and towns the value of taxable property herein mentioned shall be taken from the last assessment for city or, town purposes made previous to incurring such indebtedness; and, provided, further, that any incorporated city or town, with such assent, may be allowed to become indebted to a larger amount, but not exceeding fifteen per centum additional, for supplying such city or town with water, artificial light, or sewers, when the works for supplying such water, light,

or sewers (167) are or shall be owned and controlled by the municipality.

Sec. 4, id.

Sec. 4. Whenever the board of supervisors, board of school trustees, city or town council, or the governing body of any other municipal corporation, shall order an election for the purpose herein provided, it shall be the duty of said board of supervisors, board of school trustees, city or town council, or the governing body of any other municipal corporation, to order such election to be held at the regular voting place, or places, within the limits of said county, school district, city, town, or other municipal corporation, wherein such indebtedness is attempted to be created, not less than thirty nor more than sixty days from the date of said order; provided, whenever an election shall be held for the purpose of creating an indebtedness by a county, or school district, such order shall be made by the board of supervisors of the county wherein such election shall be held.

The order thus made shall prescribe the object of such election, as prescribed in the eighth section of this title, and shall be held to be prima facie evidence that all of the provisions necessary to give it validity or qualify such board of supervisors, city or town council, or the governing body of any other municipal corporation, to make such order have been fully complied with.

Sec. 5, id.

Sec. 5. Said board of supervisors, city or town

council, or the governing body of any other municipal corporation shall cause to be posted at least five copies of such order in public places within the county, school district, city, town, or other municipal corporation wherein such election is to be held, at least twelve days prior to the date of the election, and shall post a copy of said notice at each polling place within the county, school district, city, town, or other municipal corporation; provided, that in addition to the posting of such notice, publication of a copy thereof shall be made in some newspaper designated by said board of supervisors, mayor of said city or town, or the executive officer of any other municipal corporation, for at least thirty days prior to the date of such election. (168).

Such election shall be held in conformity with the provisions of the general election laws of the state and by the officers of election provided to be appointed by, and who shall qualify, under such laws; the return of said election in the case of a county, or school district, shall be made to the board of supervisors of the county wherein such election is held, and, in any other case, to the city or town council or other governing body of any other municipal corporation within twelve days from the date of such election; whereupon, the board of supervisors, city or town council, or the governing body of any other municipal corporation shall hold a special meeting on the first Monday succeeding said twelfth day for the purpose of canvassing the vote cast at said election; and they shall immediately thereafter by the certificate in the next section of this title, provided, declare the result of said election.

Said certificate of the result of election, so made, shall be prima facie evidence of the complete performance of all of the conditions and requirements precedent to holding of such election.

Sec. 6, id.

Sec. 6. At any election so held, if a majority of the property tax-payers, who must also in all respects be qualified electors, therein voting at said election, in such county, school district, city, town, or other municipal corporation, shall vote in favor of the creation of an indebtedness in excess of four per centum of taxable property, the value of such taxable property to be ascertained as herein prescribed, it shall be the duty of the board of supervisors, city or town council, or the governing body of any other municipal corporation (at the time prescribed in section 5 hereof) to file and record in the office of the county recorder of such county wherein such election is held, a certificate showing the object of such election, the total number of votes cast in favor of the creation of such indebtedness and the total number of votes cast against the creation of such indebtedness; and such certificate shall contain a further statement that the creation of such indebtedness is ordered; and thereupon it shall immediately become the duty (169) of such board of supervisors, board of school trustees, city or town council, or the governing body of any other municipal corporation, to take such steps as are in this title required to carry out the object of such election.

Sec. 7, id.

Sec. 7. No political subdivision or municipal cor-

poration other than the subdivision or municipal corporation wherein the election shall be held as above prescribed, for the creation of any indebtedness herein provided for, shall in any manner be responsible for, or charged with, the payment of any of the principal sum or interest thereon evidenced by such indebtedness.

Sec. 8, id.

Sec. 8. Whenever any county, school district, city, town, or other municipal corporation, shall desire under the provisions of this title to issue bonds or other evidences of indebtedness of said county, school district, city, town, or other municipal corporation, the board of supervisors, board of school trustees, city or town council, or the governing body of any other municipal corporation, may, with the assent of a majority of the property tax-payers, therein voting at said election, in such county, school district, city, town, or other municipal corporation, given in the manner herein provided, issue and sell bonds of said county, city, school district, town, or other municipal corporation, as herein provided, in the amount of indebtedness authorized at said election to be created; provided that in the call for said election hereinbefore in the second section of this title, required to be made, there shall be set forth the aggregate amount of said bonds, the term thereof, the rate of interest to be paid thereon, when such interest shall be paid, the date of maturity of said bonds or other evidences of indebtedness, and the purposes for which the money derived from the sale of such bonds or other evidences of indebtedness shall be expended.

No bonds or other evidences of indebtedness authorized to be issued shall bear interest at a rate exceeding six per centum per annum.

Sec. 9, id.

Sec. 9. Whenever an issuance of bonds or other evidence of indebtedness shall have been authorized under the provisions of this title, it shall become the duty of the county board of supervisors in behalf of the county or board of school trustees, city or (170) town council or the governing body of any other municipal corporation issuing said bonds or other evidences of indebtedness, to cause said bonds to be prepared in the amount and of the denominations so authorized, which bonds, or other evidences of indebtedness shall bear the date of their issuance, shall be numbered consecutively from one upwards, and shall be signed and attested by the following persons, to-wit: when issued by the county, by the chairman and the clerk of the board of supervisors; when issued by a school district, by the chairman and clerk of the board of school trustees, countersigned by the chairman of the board of supervisors of the county wherein such school district is situated; when issued by a city or town, by the mayor and the city clerk of such city or town; and when issued by any other municipal corporation, by the executive officer and clerk of the governing body of such other municipal corporation, with the corporate seal of any such political sub-division or municipal corporation, if there be one, affixed thereto; and said bonds shall be payable at a date not to exceed forty years from the date of their issuance.

Sec. 10, id.

Sec. 10. Said bonds shall be payable to bearer, and

coupons for the interest shall be attached to each of said bonds so that the same may be removed therefrom without mutilating the bonds, and each of said coupons shall bear a facsimile of the signature of the officers in the preceding section hereof mentioned as said signatures appear upon said bonds; provided that it shall not be necessary to impress upon any such coupon the seal hereinbefore mentioned.

Sec. 11, id.

Sec. 11. Before the sale of any of such bonds or other evidences of indebtedness, the board of supervisors, in behalf of the county or of the board of school trustees, or the city or town council, or the governing body of any other municipal corporation, as the case may be, shall at a regular meeting, or at a special meeting called for (171) that purpose, cause to be entered upon the record of said body an order directing the sale of said bonds or other evidence of indebtedness, and the date and hour of said sale, and shall cause a copy of said order to be published for at least four consecutive weeks before said sale in such daily or weekly newspaper or newspapers as may be designated by said body, together with a notice that sealed proposals will be received by them for the purchase of said bonds, or other evidences of indebtedness, on the date and hour named in said order.

Said governing body shall, at said time, and at a meeting to be held for such purpose, open all sealed proposals received by them, and shall award the purchase of said bonds to the highest and best responsible bidder; provided, that none of said bonds or other evi-

dences of indebtedness shall be sold for a less amount than par with accrued interest. All bids or proposals received for the purchase of said bonds, or other evidences of indebtedness, shall be accompanied by a certified check for a sum not less than five per cent of the total amount of such bid, and such governing body shall have the right to reject any and all bids, and all such certified checks accompanying bids which are not accepted, and which are rejected, shall be returned to the party tendering the same.

The certified check so deposited by the successful bidder shall be retained by said board of supervisors, or city or town council, and shall be forfeited in the event that such bidder shall not carry out the terms of the contract provided herein to be entered into; provided, however, that such forfeiture shall not be deemed or taken as stipulated or liquidated damages for a breach of contract and shall not prevent such board of supervisors, (172) or city or town council, from recovering damages under said contract.

Sec. 12, id.

Sec. 12. The amount of bonds sold, their numbers and dates shall be entered upon the record of the proceedings of the governing body of the county, school district, city, town, or other municipal corporation, disposing of the same.

Sec. 13, id.

Sec. 13. After said bonds or other evidences of indebtedness are issued, if such indebtedness is created by a county, or a school district situated therein, and

until all of said bonds or other evidences of indebtedness of such county are redeemed, the board of supervisors of such county where such indebtedness is created under the provisions of this title, and the city or town council, or the governing body of any other municipal corporation, creating such indebtedness under the provisions of this title, if such bonds or other evidences of indebtedness are issued by such city or town, is authorized and it shall be its duty to levy and cause to be collected a tax in addition to the amount of taxes which now or may hereafter be authorized by law for state and county purposes, at the same time and in the same manner as other taxes are levied and collected by such county, city, or town upon all taxable property in such county, school district, or city, town or other municipal corporation, sufficient to pay the interest on all bonds issued when such interest shall become due, and said tax when collected shall constitue a fund for the payment of the interest on said bonds or other evidences of indebtedness and shall be called "Interest Fund."

Sec. 14, id.

Sec. 14. The board of supervisors of any county wherein any indebtedness shall be created under the provisions of this title, either by the county or by any school district situated therein, and the council of any incorporated city or town, shall also and in (173) addition to the taxes for state and county purposes, or the taxes for city and town purposes, as the case may be, and the tax hereinabove provided to be levied for the payment of interest on such bonds or other evidences of indebtedness, levy a tax for the purpose of redeeming said bonds or other evidences of indebt-

edness when the same shall mature, as specified in the order and call for election hereinbefore in this title provided to be made, and all money derived from the levy of the tax in this section provided for, when collected, shall constitute a fund and shall be called the "Redemption Fund", and shall be used for the redemption of said bonds or other evidences of indebtedness according to the number of their issue. The tax in this section provided to be levied, shall be levied annually so as to provide a fund for the redemption of such bonds or other evidences of indebtedness when the same shall mature.

S. B. 86, 1st Leg., 3rd Sess., Sec. 1.

Whenever the owner of any coupon bond issued pursuant to the provisions of this title shall present such bond to the state auditor with the request for the conversion of such bond into a registered bond, the state auditor shall cut off and cancel the coupons of any such coupon bond so presented and shall stamp, print or write upon such bond so presented, either upon the back or the face thereor; as may be convenient, a statement to the effect that the said bond is registered in the name of the owner and that thereafter the interest and principal of said bond are payable to the registered owner. Thereafter and from time to time, any such bond may be transferred by such registered owner in person or by attorney duly authorized, on presentation of such bond to the auditor and the bond again registered as before, a similar statement being stamped, printed or (174) written thereon. Such statement stamped, printed or written up any such bond may be substantially in the following form:

(Date, giving month, year and day.)

This bond is registered pursuant to the statutes in such case made and provided in the name of.....
....., and the interest and principal thereof are hereafter payable to such owner.

.....
State Auditor.

If any bond shall have been registered as aforesaid, the principal and interest of such bond shall be payable to the registered owner. The state auditor shall enter in the register of said bonds kept by him pursuant to the provisions of this title, or in a separate book, the fact of the registration of such bond and in whose name respectively, so that the said register or book shall at all times show what bonds are registered and the name of the registered owner thereof.

Sec. 15, Act 29, Page 61, Laws 1912.

Sec. 15. When any bonds or other evidences of indebtedness created under the provisions of this title shall mature, it shall be the duty of the county treasurer when such bonds shall have been issued by the county or any school district, and of the city and town treasurer, as the case may be, when any such bonds shall have been issued by any incorporated city or town, to give notice for four weeks in some newspaper published in the county in which such bonds or other evidences of indebtedness shall have been issued, of the intention of such county, school district, city, or town to redeem such bonds, stating the amount there-

of, and such redemption shall be made by the county, city, or town, as the case may be, and all said bonds or evidences shall cease to draw interest at the expiration of four weeks after the date of said notice, and if such bonds so noticed for redemption shall not be presented (175) for redemption within three months from the date of such notice, said county treasurer, or city or town treasurer, as the case may be, shall apply said money to the redemption of the bonds next in the order of the number of their issue.

When any interest shall be due upon any of said bonds or other evidences of indebtedness, under the provisions of this title, the coupons due and payable shall be delivered to the county, city, or town treasurer, as the case may be, who shall pay the same and write the word "Cancelled" across the face thereof, and said coupons so paid and cancelled shall be said treasurer's receipt for the payment of the same, and when any of said bonds or other evidences of indebtedness shall be paid and redeemed, said treasurer shall in like manner mark them "Cancelled" on the face thereof over his signature, and immediately deliver the same to the clerk of the said board of supervisors, or city or town council, as the case may be, taking his receipt therefor, and said clerk upon receipt of said cancelled bonds or other evidences of indebtedness shall file the same in his office and report the same to the board of supervisors, or city or town council, as the case may be.

The board of supervisors, city or town council, as the came may be, of any county, school district, city or town, issuing bonds or other evidences of indebtedness under the provisions of this title shall, by resolu-

tion entered upon its minutes, prior to the offering for sale of said bonds or other evidences of indebtedness, and within a period of fifteen days from the canvassing of the vote of the election herein provided for, prepare a form of bond, which shall substantially conform to the description of said bonds mentioned in the order required by this title to be published and recorded.

Sec. 16, id.

Sec. 16. If any bonds or other evidences of indebtedness shall be issued and sold by any county, school district, city, town, or other municipal corporation, under the (176) provisions of this title, for the purpose of erecting and furnishing any public building within such county, school district, city, town, or other municipal corporation, the board of supervisors, in the event such public building shall be erected and furnished by the county or school district, and the city or town council in the event such public building is to be erected and furnished by a city, town, or other municipal corporation, shall, within the period which it is required under the provisions of the preceding section of this title, prepare and adopt a form of bond or other evidences of indebtedness, adopt plans and specifications for such building, and said board of supervisors, city or town council, as the case may be, shall, as soon as may be practicable after the adoption of such plans and specifications, advertise for bids for the erection and furnishing of said building.

The notice of advertisement for such bids shall set a day and hour, not less than forty days from the date of such notice, when said bids shall be received and

opened, and said board of supervisors, city or town council, as the case may be, shall award the contract for the erection and furnishing, or the erection or furnishing of said building to the lowest and best responsible bidder, provided that any and all bids so submitted may be rejected. In the event any bid shall be accepted, said board of supervisors, city or town council, as the case may be, shall require the person or persons to whom such award or contract has been let, to enter into a written contract with said board of supervisors, city or town council, as the case may be, for the erection and completion of said building and the furnishing thereof, and shall require such person or persons entering into such contract to give bonds to said county, city or town, for the amount of the contract, (177) with two or more sufficient sureties, or give a surety company bond in a like manner, conditioned upon the faithful performance of the contract, such bond to be approved by the board of supervisors, city or town council, as the case may be.

Such board of supervisors, city or town council, as the case may be, may agree to pay and pay upon such contract as follows: Upon the completion of one-third of the work, one-fifth of the contract price; upon completion of two-thirds of the work, an amount sufficient with the prior payment to make one-half of the contract price; and the balance of the contract price shall be paid upon the completion and acceptance of the buildings and the furnishing thereof under said contract by said board of supervisors, city or town council.

In the event that it shall be deemed necessary in conjunction with the erection of the buildings herein

mentioned to purchase a building site or sites, the call for the election shall state the proportion of the total amount of the fund to be derived from the issuance and sale of bonds or other evidences of indebtedness which shall be expended in the purchase of such building site or sites.

Sec. 17, id.

Sec. 17. Any incorporated city or town, with the assent of the qualified voters, as provided in the third section of this title, may be allowed to issue bonds or other evidences of indebtedness not exceeding fifteen per cent additional, for supplying such city or town with water, artificial lights, or sewers, when the works for supplying such water, artificial lights, or sewers, are or shall be owned or controlled by the mu-unicipality.

Sec. 18, id.

Sec. 18. The expenses of all proceedings had, (178) under this title, shall be borne by the county, school district, city, town, or other municipal corporation, instituting the proceedings necessary and required hereunder; provided, however, that in the event the bonds or other evidences of indebtedness herein authorized shall be sold, such expenses shall be deducted from the proceeds of the sale of such bonds or other evidences of indebtedness.

Sec. 1, S. B. 38, 1st Leg., 3rd Sess., 1913.

Sec. 19. Nothing in this title contained shall be construed to prevent any county, school district, city, town, or other municipal corporation from creating

an indebtedness not exceeding four per centum of the value of the taxable property in such county, school district, city, town, or other municipal corporation; provided, that if such county, school district, city, town, or other municipal corporation shall desire to fund such indebtedness by the issuance of bonds, therefor, said bonds shall be issued in all respects in conformity with the provisions of this title; and, provided, further, that it will not be necessary to hold the election required to be held herein; provided, that bonds may be issued under the provisions of this title, for the construction and reconstruction of roads, bridges and highways; for the construction of public buildings, and for any other lawful or necessary purpose. The enumeration of the above mentioned purposes shall not be deemed as restrictive of the right to issue bonds for other purposes, but rather in furtherance thereof. In case any county in the State of Arizona shall have called or held an election for the issuance of bonds, as herein provided, prior to the becoming effective of the provisions of this section, said election shall be and is hereby deemed to have been called and held pursuant to the provisions of this title, and the bonds (179) that may be hereafter issued pursuant to such election, shall be in all respects as valid and legal as though the provisions of this section had been in force at the time of said election.

Sec. 20. All Acts and parts of Acts in conflict with the Act are hereby repealed.

Sec. 21. This Act shall take effect from and after the first day of October, 1913.

Apr 24 1913

Read third time in full and passed by following vote:

28 ayes,—nays, 4 absent, 3 excused.

(signed) H. H. LINNEY
Speaker of the House

Passed the Senate April 17, 1913, by a vote of 17 ayes, 2 noes, — absent — excused.

(signed) M. G. CUNNIFF
President of the Senate

Approved April 29th, 1913:

(signed) GEO. W. P. HUNT
Governor of Arizona. (180)